TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~164~~ 164.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. BOYNTON, SAMUEL P. LANGLEY, AND R. ROSS PERRY, CONSTITUTING AND COMPOSING THE COMMISSION TO SELECT THE LAND FOR ROCK CREEK PARK, APPELLANTS,

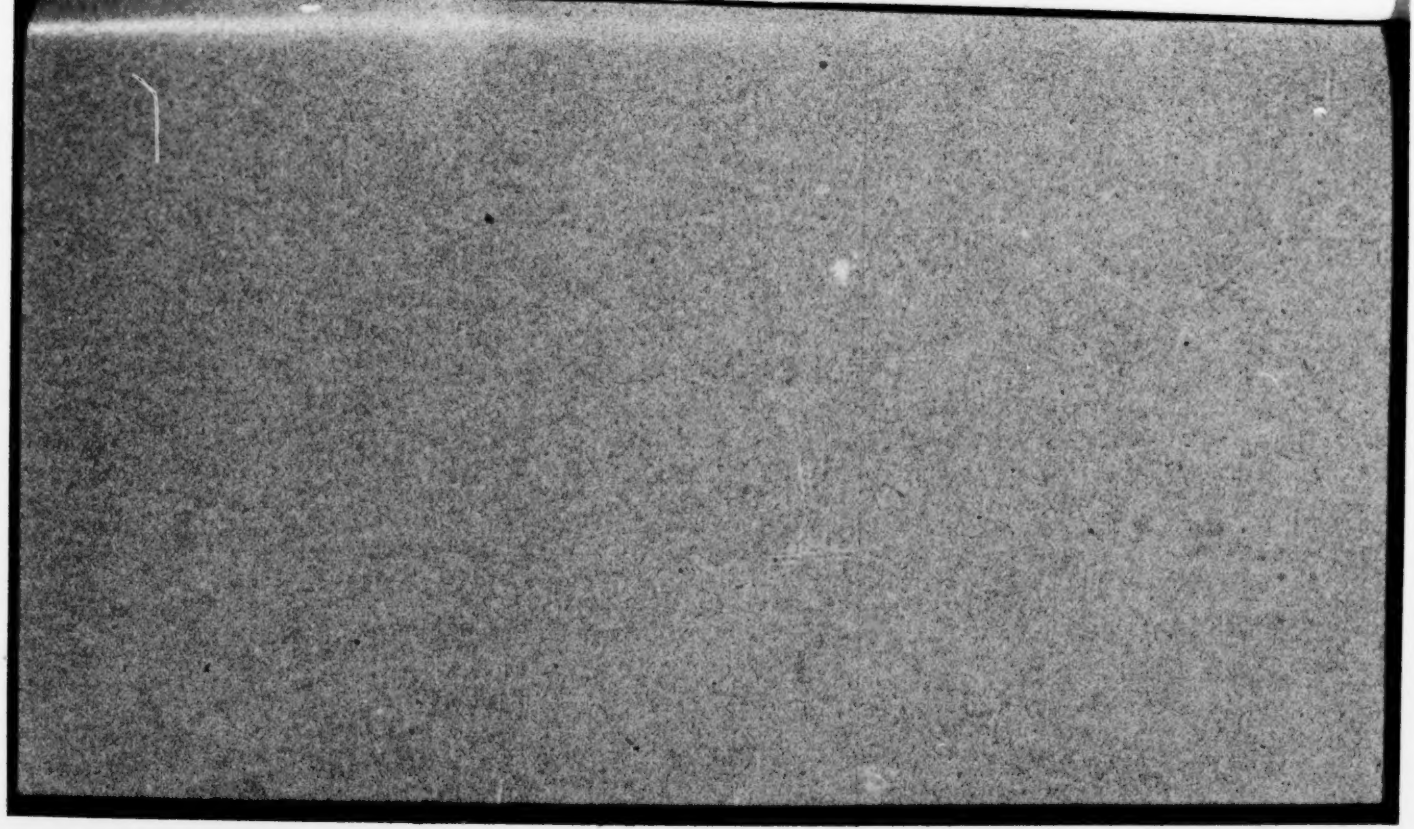
vs.

AVARILLA LAMBERT AND MARTINA CARR, CHILDREN AND SOLE HEIRS-AT-LAW OF JOHN VAN RISWICK, DECEASED, SURVIVORS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED APRIL 29, 1896.

(16,271.)



(16,271.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 504.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. BOYNTON, SAMUEL P. LANGLEY, AND R. ROSS PERRY, CONSTITUTING AND COMPOSING THE COMMISSION TO SELECT THE LAND FOR ROCK CREEK PARK, APPELLANTS,

vs.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 29, 1897.

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1 In the Court of Appeals of the District of Columbia.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. BOYNTON, SAMUEL P. LANGLEY, and R. ROSS PERRY, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow, AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased.
} No. 521.

Supreme Court of the District of Columbia.

MARY VAN RISWICK, Widow, and AVARILLA LAMBERT (*née* Avarilla Van Riswick) and Martina Carr (*née* Martina Van Riswick), Children and Sole Heirs-at-law of John Van Riswick, Deceased,
vs.
THOMAS LINCOLN CASEY, CHARLES F. POWELL, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park.
} 16171, Equity Docket 38.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 *Original Bill for Injunction.*

Filed January 19, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK, Widow, and AVARILLA Lambert (*née* Avarilla Van Riswick) and Martina Carr (*née* Martina Van Riswick), Children and Sole Heirs-at-law of John Van Riswick, Deceased,

vs.

THOMAS LINCOLN CASEY, Chief of Engineers of the United States Army; Charles F. Powell, Engineer Commissioner of the District of Columbia; Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park under and by Virtue of the Act of Congress entitled "An Act Authorizing the Establishing of a Public Park in the District of Columbia," Approved September 27, 1890.

16171, Eq. Dock. 38.

To the supreme court of the District of Columbia, holding a special term for the trial of equity causes:

Your complainants in and by their bill of complaint respectfully state as follows:

First. That they are citizens of the United States and residents of the District of Columbia, and bring this suit each in her own right, the complainant Mary Van Riswick as the widow and the complainants Avarilla Lambert (*née* Van Riswick) and Martina Carr (*née* Van Riswick) as the sole surviving heirs-at-law of John Van Riswick, deceased.

Second. That the defendants are citizens of the United States and residents of the District of Columbia and are sued as the commission for selecting the land for Rock Creek park, constituted under and by virtue of an act of the Congress of the United States entitled "An act authorizing the establishment of a public park in the District of Columbia," approved September 27, 1890, the defendants Thomas Lincoln Casey and Charles F. Powell being members thereof by official designation in said act, and the defendants Henry V. Boynton, Samuel P. Langley, and R. Ross Perry being members thereof by appointment of the President of the United States by and with the advice and consent of the Senate.

Third. That by the first section of said act it is provided as follows: "That a tract of land lying on both sides of Rock creek, beginning at Kingle Ford bridge and running northwardly, following

3 the course of said creek, of a width not less at any point than six hundred feet nor more than twelve hundred feet, including the bed of the creek, of which not less than two hundred feet shall be on either side of said creek, south of Broad Branch road and Blagden Mill road, and of such greater width north of said roads as the commissioners designated in this act may select, shall be secured, as hereinafter set out, and be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek park: *Provided, however,* That the whole tract so to be selected and condemned under the provisions of this act shall not exceed two thousand acres nor the total cost thereof exceed the amount of money herein appropriated;" and by the second section thereof it is further provided as follows: "That the Chief of Engineers of the United States Army, the Engineer Commissioner of the District of Columbia, and three citizens to be appointed by the President by and with the advice and consent of the Senate be, and they are hereby, created a commission to select the land for said park of the quantity and within the limits aforesaid, and to have the same surveyed by the assistant to the said Engineer Commissioner of the District of Columbia in charge of public highways, which said assistant shall also act as executive officer of the said commission."

Fourth. That pursuant to the requirements of the third section of said act, the defendants having duly qualified as members of the aforesaid commission, caused to be made a map of said Rock Creek park, showing the location, quantity, and character of each parcel of private property which they designed to be taken for such purpose, with the names of the respective owners inscribed thereon, which map they afterwards, to wit, on the 19th day of April, 1891, filed and caused to be recorded among the public records of the District of Columbia, to wit, in the office of the recorder of deeds for said District, reference to which said map or the record thereof, as aforesaid, is hereby prayed that the same may be taken as part hereof on the hearing of this cause.

Fifth. That of the parcels of private property shown upon said recorded map of the Rock Creek park your complainant Mary Van Riswick was tenant in dower and your complainants Avarilla Lambert and Martina Carr were seized in their demesne as of fee in equal undivided moieties as tenants in common of, in, and to parcel numbered thirteen (13), containing twelve acres, more or less, and parcel numbered sixteen (16), containing one hundred and twenty-five acres, more or less, the first named as the widow and the two last as the children and sole surviving heirs-at-law of John Van Riswick, late of the District of Columbia, who departed this life intestate and seized in fee-simple of said real estate heretofore, to wit, on the 26th day of February, 1886, and your complainants are informed that their names are duly inscribed upon said map as owners of said parcels respectively.

Sixth. That upon the failure of the defendants to agree with the respective owners for the purchase of all of the parcels of private prop-

erty shown upon said recorded map and so selected and con-
4 demned at the price which had been approved by the Presi-
dent of the United States such further proceedings were thereupon had, on the petition of the defendants, that this honorable court thereafterwards, to wit, on the 9th day of July, 1891, in order to ascertain and assess the value of the land so selected and condemned, as prescribed by the aforesaid third section of said act, appointed three competent and disinterested commissioners to appraise the value or values thereof, and the said commission, having valued said parcels of land respectively, thereafterwards, to wit, on the 19th day of December, 1891, made return of their appraisement thereof unto this honorable court, as required by the said section of said act, whereby it appeared that the aggregate amount of said appraisement was in excess of the sum of twelve hundred thousand dollars; that thereupon the defendants, in order, as your complainants are informed and believe, and therefore charge, to bring the total cost of the land taken, including the expenses incident thereto, within the sum of twelve hundred thousand dollars, so as aforesaid appropriated for said park, caused to be made another and modified map of said Rock Creek park, showing a diminished area for said park and omitting therefrom the aforesaid parcels numbered, respectively, thirteen (13) and sixteen (16) among certain other parcels of private property exhibited, as aforesaid, upon the previously recorded map of said park, and the President of the United States having decided the prices of the several parcels of land shown upon the modified map—amounting, in the aggregate, to a much smaller sum than the sum of twelve hundred thousand dollars—to be reasonable, said appraisement was thereafterwards, to wit, on the — day of ——, 1892, approved by this honorable court, and said parcels numbered respectively thirteen (13) and sixteen (16) were thereafterwards, to wit, on the 15th day of July, 1892, by its order duly passed upon the application in that behalf of your complainants, finally and fully released and exonerated of and from the operation and effect of the aforesaid seizure and condemnation, all of which will more fully and at large appear, reference being had to the record of said condemnation proceedings, entitled "United States on the relation of the commission to select the land for Rock Creek park *vs.* Glen W. Cooper and others," numbered 366 on the district court docket of this honorable court, which it is prayed may be read and taken, so far as may be material, as part hereof upon the hearing of this cause.

Seventh. Your complainants further charge that it will further appear from said proceedings that the amount of the compensation so as aforesaid assessed for the lands taken and included within the said modified map of the Rock Creek park was thereafterwards from time to time, to wit, during the year 1893, fully paid and satisfied to the owners of the respective parcels of private property shown thereon upon successive reports of the special auditor appointed by this honorable court to investigate the titles to said parcels of private property and upon the order of the defendants, and that said amount, together with the expenses of inquiry,

5 survey, and assessment of said lands, has been paid exclusively from and out of the sum of one million two hundred thousand dollars appropriated in and by the sixth section of said act of Congress for the purpose, whereof the one-half is therein provided to be reimbursed to the Treasury of the United States out of the revenues of the District of Columbia in four equal annual installments, with interest at the rate of three per centum per annum upon the deferred payments.

Eighth. That heretofore, to wit, on the thirteenth day of July, 1892, your complainants, at the special instance and request of the defendants, communicated through the attorney of the United States for the District of Columbia, conveyed, without consideration of any kind whatever and by way of gift or donation, to the United States all that part of parcel numbered sixteen (16), bordering the Rock creek and forming a strip two hundred and fifty feet in width, extending from the center of said creek, and containing ten acres of land, more or less, as will appear, reference being had to the record of said deed or conveyance in Liber No. 1705, at folio 154, of the land records of the District of Columbia; and thereafterwards, to wit, on the twenty-fifth day of June, 1894, these complainants, at the like special instance and request of the defendants, conveyed to the United States, upon a consideration of five thousand six hundred and twenty-eight dollars—that being the price at which the land had been appraised by the appraising commissioners, and the defendants refusing to give more, although urged by the complainants to do so—a further part of the aforesaid parcel numbered sixteen (16), amounting to fourteen (14) acres thereof, as will appear, reference being had to the record of said deed or conveyance in liber numbered 1930, at folio 135, of the aforesaid land records of the District of Columbia; and these complainants further show that the entire contents of the aforesaid parcel numbered thirteen (13), together with the residue of parcel numbered sixteen (16), after deducting therefrom the parts so as aforesaid conveyed to the United States, are now held, owned, and possessed by your complainants according to their several and respective interests and estates therein, as hereinbefore set forth, and that said land immediately adjoins and -buts upon the said Rock Creek park and is necessarily included in the designation of land surrounding the same.

Ninth. That the cost of all the land taken or acquired by purchase for said Rock Creek park has been long since fully paid and satisfied to the owners of said land, and all and singular the expenses incident thereto have been fully paid from and out of the sum of one million and two hundred thousand dollars appropriated as aforesaid for the purpose in and by the sixth section of said act of Congress, whereof your complainants are informed and believe an unexpended balance yet remains in the Treasury of the United States subject to the orders of the defendants, and the one-half of the sum of money so appropriated and expended, with interest thereon at the rate of three per centum per annum, is being repaid and reimbursed to the United States in annual installments

6 in the manner provided by the said sixth section of said act

of Congress, from and out of the taxes annually levied within the said District of Columbia, on the basis afforded by the general assessment of the lands subject to taxation therein, including the aforesaid land of your complainants.

Tenth. Your complainants are advised and believe, and therefore charge, that with the full and entire payment of the cost of the land taken and purchased for said Rock Creek park and with the discharge and satisfaction of the expenses incident thereto the said Rock Creek park was finally and definitely established, and that with the establishing as aforesaid of said park the said park passed by operation of law, as expressed in the seventh section of said act of Congress, under the permanent and joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army, to the exclusion of the defendants, who thereupon ceased to have or exercise any office, power, or authority whatever under the law in reference or regard to or any control over the said Rock Creek park.

Eleventh. That notwithstanding the premises and that the expenses of inquiry, survey, assessment, cost of land taken, and all other necessary expenses incidental thereto have been fully paid and satisfied from and out of the sum of one million two hundred thousand dollars appropriated for the purpose as aforesaid in and by the sixth section of said act, and notwithstanding that one-half of the sum so appropriated and expended is a present subsisting charge upon all the taxable lands within the District of Columbia, including the aforesaid land of your complainants, and is being repaid and reimbursed to the Treasury of the United States out of the general tax revenues of the District of Columbia in four equal annual installments, with interest at the rate of three per centum per annum, as is further provided by said sixth section of said act, and—

Notwithstanding the further fact that the need and occasion for creating a fund by assessment as for special benefits to the real estate in the District of Columbia by reason of the location and improvement of the said park, to be applied, as it only can be applied under the provision of the sixth section of said act, exclusively to the payment by the Treasurer of the United States, on the order of the defendants, to any persons entitled thereto as compensation for land or services, has been fully and completely anticipated and superceded by the expenditure as aforesaid of the appropriation of twelve hundred thousand dollars or of so much thereof as was needed for the purpose, and notwithstanding the said defendants were fully and finally discharged by the establishment of the park as aforesaid and by operation of law of and from the performance of any further office or function in connection therewith:

The defendants, nevertheless, erroneously claiming to act under the authority of said act, have lately given notice by advertisement in the daily newspapers printed and published in the city of Washington, in the District of Columbia, that they would, on Saturday,
7 the fifth day of January, A. D. 1895, at two o'clock p. m. in room numbered 31 in the city hall, sometimes called the

court-house, in the said city, hold their first meeting for the purpose of assessing the cost of the land taken for and now constituting the Rock Creek park, including the expenses of acquiring the said land, upon the lands, lots, and blocks, being real estate situate in the said District of Columbia, specially benefitted by reason of the location and improvement of said Rock Creek park, as nearly as may be in proportion to the benefits resulting to such real estate, and that if they shall find that the real estate in said District directly benefitted by reason of the location of the said Rock Creek park is not benefitted to the full extent of the said cost and expenses, then that they will assess each tract or parcel of land specially benefitted as aforesaid, in said District, to the extent of such benefits as they shall deem the said real estate specially benefitted by reason of the location and improvement of said Rock Creek park, and, further, that it is their intention to confine such assessment as they may make within such definable area as shall include lands, like the land of your complainants, surrounding said Rock Creek park, as will more fully appear, reference being had to a copy of the defendant's aforesaid advertised notice, which is hereto annexed as part hereof.

Rock Creek Park Commission—Assessment of Benefits.

CITY OF WASHINGTON, D. C., *December* 13, 1894.

To all whom it may concern:

This is to give notice that the commission to select the land for Rock Creek park, acting by authority of an act of Congress entitled "An act authorizing the establishing of a public park in the District of Columbia," said act approved September 27, 1890, have ascertained the cost of the land taken for and now constituting the said Rock Creek park, including the expenses of acquiring the said land. Further, this is to give notice that the said commission, acting under the said authority, will, on Saturday, the fifth day of January, A. D. 1895, at two o'clock p. m., in room numbered 31 in the city hall, sometimes called the court-house, in the said city, hold their first meeting for the purpose of assessing such proportion of such cost and expenses upon the lands, lots, and blocks, being real estate situated in the said District of Columbia, specially benefited by reason of the location and improvement of said Rock Creek park, as nearly as may be in proportion to the benefits resulting to said real estate, and if the said commission shall find that the real estate in said District directly benefited by reason of the location of the said Rock Creek park is not benefited to the full extent of the said cost and expenses, then they will assess each tract or parcel of land specially benefited as aforesaid in said District to the extent of such benefits as they shall deem the said real estate specially benefited by reason of the location and improvement of said Rock Creek park. In making the said assessment the said real estate benefited as aforesaid will be assessed by the description thereof which shall appear of record in the said District on the day of the said first meeting, to wit, January 5, 1895. All persons inter-

ested may appear and be heard at the time and place aforesaid of the said first meeting of the said commission for the said purpose, and the said persons are hereby notified to so appear if they or any of them desire to be heard in the premises. It is the purpose of the commission to first hear testimony as to the extent of surrounding land affected beneficially by the location and improvement of Rock Creek park.

THOS. LINCOLN CASEY,
Chief of Engineers, U. S. Army,
CHAS. F. POWELL,
Engineer Commissioner, D. C.,
H. V. BOYNTON,
S. P. LANGLEY,
R. ROSS PERRY,
Commission to Select the Land for Rock Creek Park.

Twelfth. That at the time and place designated in said advertisement your complainants, by their attorney and counsel, Tallmadge A. Lambert, Esquire, formally and in writing protested against the proposed assessment as for alleged benefits to real estate within the District of Columbia by reason of the location and improvement of said Rock Creek park for the reasons and upon the grounds specifically set forth and enumerated in their said paper-writing or protest (a copy whereof is herewith filed, marked Exhibit "A," and is prayed to be read as part hereof), and caused the same to be then and there filed with the defendants, who thereupon, after receiving like protests in writing from other owners of property within the District of Columbia liable to assessment, adjourned to meet again at the same place and hour on Saturday, the 19th day of January, 1895, for the purpose, as they avowed, of consulting the Attorney General of the United States in the meantime touching their powers and legal right to proceed with said assessment.

Thirteenth. Your complainants, however, are informed and believe, and therefore charge, that since the interval which has elapsed since said meeting the Attorney General of the United States has declined to advise the defendants touching the limitation of their powers and duties in the premises, and that it is the fixed intention and determination of the defendants to proceed with the assessment as aforesaid of each tract or parcel of land within the District of Columbia to the extent of such benefits as they shall deem the said real estate specially benefitted, and that it is their purpose, at the meeting to be held by them on the 19th day of January instant, to enter upon the assessment of the aforesaid land of your complainants and of others so as aforesaid surrounding or abutting upon said Rock Creek park, and to proceed with said assessment thereafter from time to time until the same shall be completed.

9 Fourteenth. Your complainants are advised and charge that upon a just interpretation of said act of Congress the threatened assessment, when confirmed, will "be made a lien on the real estate assessed; that said real estate will be liable to be sold upon default being made in any installment of such assessment;

that deeds made to purchasers at sale for such delinquent assessments will be *prima facie* evidence of the right of the purchaser and any one claiming under him that the real estate was subject to asse-sment and directly benefitted, and that the assessment was regularly made; that the assessment was not paid; that due advertisement had been made; that the grantee in the deed was the purchaser or assignee of the purchaser, and that the sale was conducted legally;" that "any judgment for the sale of any real estate for unpaid assessment shall be conclusive evidence of its regularity and validity in all collateral proceedings, except where the assessment was actually paid, and the judgment shall estop all persons from raising any objection thereto or to any sale or deed based thereon which existed at the date of its rendition and could have been presented as a defense to the application for such judgment;" that such assessment will be valid upon its face, and its invalidity could only be shown by evidence of facts extrinsic thereto, as—

a. That the defendants are *functi officiis* and no longer possess the power and authority to make such assessment.

b. That the time has long since elapsed when the said assessment could have been made legally in the manner and for the objects and purposes prescribed in and by said act.

c. That said assessment is not authorized at this time upon any just interpretation of the said sixth section or upon any rational construction of the entire act.

d. Because the moneys realizable upon said assessment are payable, under the act, directly to the Treasurer of the United States, who is required to keep the same as a separate fund to be paid out by him, on the order of the defendants, to any persons entitled thereto as compensation for land or services, and there are, in point of fact, no persons to whom such payments can be legally made at this time.

e. Because the occasion of making such assessment has been anticipated and made nugatory by the payment in full, as aforesaid, of all persons entitled to compensation for lands and services out of the $1,200,000 appropriated for the purpose by said act.

f. Because the proposed assessment can only result in the creation and accumulation of a fund which, if capable of being used at all, could only be used as a separate fund for the unlawful payment of persons already paid in full for their land and for their services.

g. Because the economic conditions which made the consequences, beneficial or otherwise, of the location and improvement of the Rock Creek park possible of ascertaining at the date contemplated by said act for the making of such assessment, to wit, at the date of its establishment, have ceased in the interval to exist or have become modified to such a degree as to afford no just or legal criteria for making such assessment.

10 *h.* Because, as your complainants are prepared to prove, no special benefits have, in fact, inured to the land, lots, and blocks, including the land of your complainants, situate in the District of Columbia by reason of the location of said park, and because, inasmuch as said park remains today in precisely the same

condition that it was in at the date of its location, nearly four years ago, no such benefits have resulted from its improvement, and your complainants beg leave to refer upon this point to the accompanying affidavits marked, respectively, "A" and "B."

i. Because the assessment authorized in and by the sixth section of the act is excessive, inequitable, and unjust in this, that the said section prescribed that if the proceeds of assessment exceed the cost of the park the excess shall be used in its improvement, and is insensible in that it provides, further, that such excess shall be so used, "under the direction of the officers named in section eight, if such excess shall not exceed the amount of ten thousand dollars," in this, that the act contains no such section as section eight, and therefore names no officers having authority to so use such excess, and is incapable of execution because it further provides that "if it shall exceed that amount that part above ten thousand dollars shall be refunded ratably" in this, that provision is thereby made for the excessive levy of said assessment over and above any possible legitimate object therefor and in violation of fundamental principles governing and controlling the exercise of the taxing power of the legislature.

j. Because the section is repugnant, irreconcilable, and incapable of enforcement because it provides in the first place for the assessment, exclusively, of "such proportion of such cost and expenses upon the lands, lots, and blocks situated in the District of Columbia specially benefitted by reason of the location and improvement of said park as nearly as may be in proportion to the benefits *resulting* to such real estate," and subsequently prescribes that "if the proceeds of assessment exceed the cost of the park the excess shall be used in its improvement * * * if such excess shall not exceed the amount of ten thousand dollars."

And that a cloud will be thereby cast upon your complainants' title to their aforesaid real estate, and they will be subjected to a multiplicity of suits in connection therewith, in consequence whereof and of the premises they will unavoidably suffer irreparable injury for which the strict course of the common law affords them no redress and for which they are remediless save by the intervention of a court of equity.

Fifteenth. Further complaining, your complainants say that they are advised and believe, and therefore charge, that the said act of Congress, in so far as and to the extent that it makes provision for and prescribes the assessment of such proportion of the cost and expense of the location and improvement of the said Rock Creek park upon the lands, lots, and blocks situated in the District of Columbia specially benefitted by reason of such location and improvement as the defendants shall deem the said real estate
11 specially benefitted, is repugnant to the Constitution of the United States, and therefore void, for the following, among other, reasons, to wit:

1. Because provision is thereby made for the levy of a direct tax in aid of an object avowedly national without regard to the rule of

apportionment prescribed in and by the second section of the first article of the Constitution.

2. Because if the object of the proposed assessment be not in truth general and of national use and enjoyment, as it is declared by said act to be, but, on the contrary, a matter of purely local concern and obligation, however unsolicited, the act is clearly unconstitutional, in that it appropriates the sum of $1,200,000 from the monies of all the people of the United States for a private use, benefit, and enjoyment of a relatively small proportion of the individual citizens thereof.

3. Because whether the Rock Creek park, the object of the proposed assessment, be regarded as a work of purely national character or as a local improvement only, the authority sought to be conferred by said act on the defendants to assess each tract or parcel of land specially benefitted to the extent of such benefits as they shall deem the said real estate specially benefitted is such attempted delegation of legislative authority as is incompatible with the implied limitation upon the powers of Congress in that behalf prescribed by section eight of article one of the Constitution.

4. Because it is thereby sought, arbitrarily and in the manifest absence of compensating benefits, to subject the property of comparatively few individuals, located within narrow territorial limits, to assessments alike for the cost and for the improvement of a tract of land which is legislatively declared to "be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States."

5. Because constitutional limitations upon the powers of Congress, whether legislating in its national character or exclusively in the interests of the District of Columbia, are no less strictly defined by implication than they are by express inhibition, so that it is equally objectionable to visit upon the entire population of the United States the cost of a work of local and private concern to the people of the District of Columbia and to burden the people of the District of Columbia with the cost of a tract of land which has been perpetually dedicated and set apart as as public park or pleasure ground for the benefit and enjoyment of the people of the United States.

6. Because the assessment of your complainants' property as for benefits, which is threatened by the defendants in face of the generally admitted fact that no benefits have in fact inured to their said property by reason of the location and improvement of said Rock Creek park, must result in such property being taken for public use without just compensation and in derogation of constitutional guarantee.

7. Because the location and improvement of the Rock Creek park confers no benefit upon the real estate within the District of
12 Columbia over and above the general benefit conferred on the people at large of the United States.

Sixteenth. Your complainants are further informed and believe, and therefore charge the truth to be, that the defendants intend to include and have actually included within the area or district which they propose to assess as for benefits derived and derivable from the

location and alleged improvement of the said Rock Creek park and for the expenses incidental thereto all the land surrounding said park, including the aforesaid land of your complainants, and that, unless they shall be restrained by this honorable court from so doing, the said defendants, acting as the commission aforesaid, will proceed forthwith to levy such assessment upon the aforesaid land of your complainants.

Wherefore, the premises considered and forasmuch as your complainants are remediless as aforesaid at law and can only obtain relief by the preventive agency of a court of equity, your complainants humbly pray as follows:

1. That the said defendants, The Commission for Locating the Land for Rock Creek Park, may be enjoined and restrained by the order of this honorable court during the pendency of this suit and forever thereafter from making and levying an assessment for any proportion whatever of the cost and expenses of locating and improving the Rock Creek park upon the aforesaid land of your complainants.

2. That so much and such part of the aforesaid act of Congress as provides in and by the sixth section thereof for assessing a proportion of the cost and expenses of locating and improving the Rock Creek park upon the land, lots, and blocks situated in the District of Columbia as for special benefits by reason of the location and improvement of said park be declared to be repugnant to the Constitution of the United States, and therefore void.

That your complainants may have such other and further relief as their case may require.

May it please your honorable court to grant unto your complainants the writ of subpœna directed to the said Thomas Lincoln Casey, Chief of Engineers of the United States Army; Charles F. Powell, Engineer Commissioner of the District of Columbia; Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, all residing in the District of Columbia aforesaid, commanding them to be and appear in this court at some certain day to be named therein and answer the premises and abide by and perform such decree as may be passed therein.

And, as in duty bound, your complainants will ever pray, etc.

MARY VAN RISWICK.
AVARILLA LAMBERT.
MARTINA CARR.

LAMBERT, LAMBERT & WILSON,
Solicitors for Compl'ts.

13 DISTRICT OF COLUMBIA, *To wit:*

We, Mary Van Riswick, Avarilla Lambert, and Martina Carr, on oath say that we have heard read the foregoing bill of complaint by us subscribed and know the contents thereof; that the facts therein stated of our personal knowledge are true, and the facts therein stated on the information of others we believe to be true.

MARY VAN RISWICK.
AVARILLA LAMBERT.
MARTINA CARR.

Subscribed and sworn to before me this seventeenth day of January, A. D. 1895.

[SEAL.] GEORGE C. AUKAM,
Notary Public, D. C.

EXHIBIT A.

Before Thomas Lincoln Casey, Chief of Engineers, United States Army; Charles F. Powell, Engineer Commissioner of the District of Columbia; Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Esquires, commissioners to select the land for Rock Creek park, convened for the purpose of assessing benefits under the act of Congress approved September twenty-seventh, 1890, entitled "An act authorizing the establishment of a public park in the District of Columbia."

Now come Avarilla Lambert and Martina Carr, who, as the sole surviving children and heirs-at-law of John Van Riswick, deceased, are seized in their demesne as of fee in equal undivided moi-ties of, in, and to the entire contents of parcel numbered thirteen (13) (amounting to about 12 acres) and to such residue (amounting to about 98 acres) of the contents of parcel numbered sixteen (16) on the recorded map of the Rock Creek park as remains after deducting from said parcel numbered sixteen (16) the donation of ten (10) acres, more or less, which was made by them to the United States for the purpose of said park heretofore, to wit, on the thirteenth day of July, 1892, and the additional quantity of fourteen (14) acres which were sold by them to the United States for the purposes of said park thereafterwards, to wit, on the twenty-fifth day of June, 1894, and not waiving any just rights of exception which they or either of them may have or be entitled at any time hereafter to urge to the jurisdiction of this honorable commission in the premises and to the regularity of its proposed proceeding, but hereby expressly reserving unto themselves all and singular such just rights by their counsel, Tallmadge A. Lambert, Esq., respectfully except to and protest against the assessment of their said lands for any proportion whatsoever of the cost of the land taken for and now constituting the said Rock Creek park or of the expenses of acquiring the same for the following, among other, reasons:

First. Because the values of the parcels of land included
14 within the recorded map of the Rock Creek park were duly found by the commission appointed for that purpose under and by virtue of the third section of said act of Congress, and were thereupon and to the extent of the lands selected by this honorable commission duly approved by the President of the United States, and the values so ascertained by the appraising commission and appraised by the President of the United States, being the cost of the land actually taken for said park, together with all and singular the expenses for acquiring the same, were then and there fully paid and satisfied, the former to the owners respectively of said several parcels of land and the latter to the several agents em-

ployed in the acquisition thereof, as will fully and at large appear, reference being had to the reports, audits, and vouchers of said payments respectively filed among the proceedings in cause No. 366 on the district court docket in the clerk's office of the supreme court of the District of Columbia, entitled "United States, upon petition, etc., *vs.* Glen W. Cooper *et al.*"

Second. Because no part whatsoever of the cost of the land taken for and now constituting the said Rock Creek park and no part whatsoever of the expenses of acquiring the said land remains at the present time unsatisfied and unpaid.

Third. Because of the aggregate sum of money which was appropriated by the Congress and named in said act, to wit, the sum of $1,200,000, such proportion as was necessary has been already expended, on the requisition and request of this honorable commission, for the cost of the land taken for and now constituting the said Rock Creek park and for the expenses of acquiring the said land, and the obligation of reimbursing the Treasury of the United States to the extent of one-half of the money so expended is imposed upon these protestants in common with all other tax payers within the District of Columbia by the sixth section of said act, so that to the full extent of one-half part of said expenditure the lands of these protestants and of all other tax-payers within said District are already burdened and taxed for the cost of the land taken for and now constituting the said Rock Creek park, including the expenses of acquiring the same, and it is respectfully submitted that any further taxation for this purpose, whatever may be the guise it shall assume and however its territorial operation may be limited, cannot fail to be duplicate, odious, and unjust.

Fourth. Because these protestants are advised that a fair interpretation of said act would seem to make clear the intention of its framers.

To secure the selection of a tract of land within certain designated boundaries, to "be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek park," and to propose to this honorable commission the adoption of the following steps, in the strict order of succession, for its acquisition, as—

a. To provide for the purchase of such lands as might be bought.

15 *b.* To provide for the condemnation of such lands as could not be purchased and for the assessment of their values respectively.

c. To defray the cost of the land so condemned, including the expenses of acquiring the same, by assessing "such proportion of such cost and expenses upon the lands, lots, and blocks situated in the District of Columbia specially benefitted by reason of the location and improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate."

d. To turn over the proceeds of such assessment to the Treasurer of the United States, to be by him kept as a separate fund and to

be disbursed by him on the order of this honorable commission "to any persons entitled thereto as compensation for land or services."

e. To supply any deficiency in said assessment when made, or if, for any reason, it should not have been made in its proper sequence, as actually happens, or at all, then, and in that event, "to pay the expenses of inquiry, survey, assessment, cost of lands taken, and all other necessary expenses incidental thereto" out of the sum of one million two hundred thousand dollars appropriated by said act for the purpose.

f. To provide that the public park authorized and established by said act should thereafter and permanently be under the joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army.

Fifth. Because these protestants are further advised that upon a fair construction of said act the duties of your honorable commission in this behalf ceased *ipso jure* with the establishment of the park, and that the park was established when the cost and expenses thereof were fully paid and satisfied out of the moneys appropriated for the purpose by the said act of Congress. Wherefore these protestants respectfully submit that any assessments that might now be made by your honorable commission could not be otherwise than ineffectual.

Sixth. Because conceding, *argumenti gratia*, the existence of authority in this honorable commission to make the proposed assessment, these protestants respectfully submit that the period for making it as established by the said act, to wit, a period immediately subsequent to the final confirmation of the report of the appraising commission, has long since elapsed, and with it the contemporaneous conditions which were alone competent to determine the judgment of this honorable commission in making such assessments have ceased to exist.

Seventh. Because, again conceding, *argumenti gratia*, the right to assess at all, no special benefits have, in fact, inured to the lands, lots, and blocks situated in the District of Columbia by reason of the location of said park, and inasmuch as said park remains today in precisely the same condition in which it was at the date of its location, nearly four years ago, no such benefits have resulted from its improvement.

Eighth. Because the provisions of said act on the subject of assessment are hopelessly conflicting and insensible, and these
16 protestants submit that any attempt to enforce them must result in the imposition of an unjust, unnecessary, and duplicate burden upon the unbenefitted tax-payer.

Ninth. Because local assessment as for supposed benefits resulting from the purchase and improvement of pleasure grounds and parks avowedly for the use, enjoyment, and benefit of the public at large is wrong in principle, arbitrary in practice, and inequitable in application and is disavowed in effect by forty-six of the forty-nine cities of the United States possessing such public parks, in each of which resort has been had for their purchase and improvement to

general as opposed to special taxation, as appears from the replies received by this honorable commission to its circular letter on the subject bearing date the 28th day of September, 1894, and in this connection these protestants beg leave to call attention to the following extract from the answer made on behalf of the city of St. Louis:

"In former years, about thirty years ago, special taxing park districts were created by act of legislature or city ordinance, but later on abolished, and all parks are now maintained from the general fund of this municipality."

Wherefore, and forasmuch as these protestants do not wish to be understood as waiving any right which they or either of them may have to except to the further proceedings in this behalf of this honorable commission, these protestants, by Tallmadge A. Lambert, Esq., their counsel as aforesaid, crave leave of this honorable commission to file therewith the foregoing statement of exceptions to and protest against its further proceedings in the premises; and these protestants, as in duty bound, will ever pray, etc.

TALLMADGE A. LAMBERT,
Counsel for Avarilla Lambert and Martina Carr, Children and Sole Surviving Heirs-at-law of John Van Riswick, Deceased.

EXHIBITS "B" & "C."

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
THOMAS LINCOLN CASEY *et al.* } No. —, Eq. Doc.

DISTRICT OF COLUMBIA, *To wit:*

I, William B. Gurley, on oath say that I am a resident of the District of Columbia and have resided therein for the past thirty years; that I am engaged in the business of real-estate and investment securities in the city of Washington and am well acquainted with the values of land in said District; that I know the location of the Rock Creek park and am acquainted with the lands adjacent thereto; that, whatever might have been the beneficial influence of the park upon adjacent and remote land within the District
17 of Columbia in favorable times and under favorable conditions, the financial depression and monetary stringency which has prevailed since the period of its establishment in 1893 have effectively neutralized and destroyed any such influence by depreciating the market for real estate generally throughout the District of Columbia. I do not, therefore, consider that any benefits whatever have thus far resulted to or can at this time be predicated of adjacent or other property within the District of Columbia by reason of the location of the Rock Creek park; and inasmuch as said park remains today in precisely the condition it was

in at the time of its location, no benefit whatever has resulted from its improvement.

WILLIAM B. GURLEY,
1335 *F St. N. W.*

Subscribed and sworn to before me this 17th day of Jan'y, A. D. 1895.

[SEAL.] FRANK WILSON BROWN,
Notary Public.

I have read the statement of W. B. Gurley and concur in the same.

CHAS. C. DUNCANSON.

Subscribed and sworn to before me this 19th day of January, A. D. 1895.

[SEAL.] W. P. YOUNG,
Notary Public.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
THOMAS LINCOLN CASEY *et al.* } No. —, Eq. Doc.

DISTRICT OF COLUMBIA, *To wit:*

We, whose names and occupations are hereunder written, being citizens of the United States and residents of the District of Columbia, on our respective oaths say that we have personal knowledge of the location and surroundings of the Rock Creek park and of the values of land generally within the District of Columbia; that we have read the annexed affidavit of William B. Gurley and fully agree with him in the opinion that no benefits whatever are now justly assessable upon or against land surrounding the Rock Creek park or upon or against land otherwise situated in the District of Columbia by reason of the location and establishment of said park, and that no such benefits are traceable to either description of land within the District of Columbia by reason of the improvement of said park for the sufficient reason that no improvement whatever has been made thereof since the time of its location and establishment as aforesaid.

DWIGHT ANDERSON,
Real Estate, 1008 *F St. N. W.*

18 DISTRICT OF COLUMBIA:

Subscribed and sworn to before me the 19th day of January, A. D. 1895.

[SEAL.] HENRY J. GROSS,
Notary Public.

Demurrer.

Filed February 5, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
THOMAS LINCOLN CASEY *et al.* } In Equity. No. 16171.

Demurrer.

These defendants, by protestation, not confessing all or any of the matters and things in said bill of complaint contained to be true in manner and form as the same are therein set forth, do demur thereto, and for cause of demurrer show that the said complainants have not in and by their said bill stated such a case as does or ought to entitled them to any relief in equity against these defendants.

Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court whether they shall be compelled to make any further answer to the said bill or any of the matters or things therein contained, and pray to be hence dismissed at reasonable costs in this behalf sustained.

A. A. BIRNEY,
U. S. Att'y, D. C., Sol'r for Defendants.

Order Sustaining Demurrer, etc.

Filed February 18, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants,
vs.
THOMAS LINCOLN CASEY *et al.*, Defendants. } No. 16171, Equity Docket.

This cause coming on to be heard upon the demurrer of the defendants to the complainants' bill and having been argued by counsel and considered by the court, it is, this 18th day of February, 1895, adjudged, ordered, and decreed that the said demurrer be, and the same is hereby, sustained, with leave, however, to the complainants to renew their application at a later stage in the proceedings of the defendants as such commission by supple-
19 mental bill or other pleading as the complainants may be advised, for which purpose jurisdiction is retained by the court of the cause.

W. S. COX, *J.*

Supplemental Bill & Exhibit "A."

Filed February 27, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK, Widow, and AVARILLA LAMBERT (*née* Van Riswick) and Martina Carr (*née* Van Riswick), Children and Sole Heirs-at-law of John Van Riswick, Deceased,

vs.

THOMAS LINCOLN CASEY, Chief of Engineers of the United States Army; Charles F. Powell, Engineer Commissioner of the District of Columbia; Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park under and by Virtue of the Act of Congress Entitled "An Act Authorizing the Establishing of a Public Park in the District of Columbia," Approved September 27, 1890.

To the supreme court of the District of Columbia, holding a special term for the trial of equity causes:

The supplemental bill of complaint of the above-named complainants humbly shows that heretofore they filed their bill of complaint in this court against the above-named defendants, praying, among other things, that the said defendants might be enjoined and restrained from assessing the certain land of the complainants therein specifically mentioned as for alleged benefits resulting from the location and improvement of the Rock Creek park, as in said bill is particularly set forth; to which bill the defendants demurred generally, and such proceedings were thereupon had that the court sustained the said demurrer, with leave, however, to the complainants to renew their application for injunction at a later stage in the proceedings of the defendants as a commission for assessing benefits as aforesaid by supplemental bill or otherwise as they might be advised, for which purpose jurisdiction of the cause was then and there retained by the court, as by the same proceedings now in this court will appear.

And the complainants now further show unto this honorable court by this their supplemental bill of complaint (hereby renewing the allegations in said original bill and making the said original bill a part of this supplemental bill) that since the passage of the aforesaid order and decree in this cause the defendants have proceeded to assess the lands, lots, and blocks, being real estate within the District of Columbia, which they deem to be specially benefited by reason of the location and improvement of said Rock Creek park, pursuant to the advertisement in that behalf, which is mentioned in the bill of complaint, and to that end have con-
20 vened in public session from time to time and have solicited the attendance of divers persons whose opinions, not sanctioned by oath or affirmation, have been solicited on the subject of

the existence, extent, and value of such alleged benefits, and then and there have caused said opinions to be reduced to writing; (that of the persons whose opinions have thus far been given upon request as aforesaid of the said defendants, James A. Bates, Samuel T. G. Morsell, and J. Harrison Johnson, who constitute the existing board of assessors for the District of Columbia; Frederick L. Moore, who was a member of the last preceding board of assessors, and John F. Cook, the late collector for said District, have each declared, as the complainants are informed and believe, that no appreciable special benefits have resulted as yet to real estate lying within the District of Columbia by reason of the location and improvement of said park, and that the only views favorable to the existence of such benefits are such as have been expressed by Michael I. Weller, a real-estate agent doing business in the eastern section of the city of Washington, and William C. Dodge, who is engaged in business in said city as a patent attorney, neither of whom, as the complainants are further informed and believe, undertook to set a valuation upon such supposed benefits or exhibited a personal acquaintance with the topographical features of the lands surrounding the park or with the conditions determining the current market values of such lands; and complainants further show that notwithstanding said preponderance of opinions adverse to the existence of any special benefits to lands, lots, or blocks, being real estate within the District of Columbia, by reason of the location and improvement of said park) that the defendants (nevertheless), at the last preceding public session held heretofore, to wit, on the 21st day of February, 1895, formally announced that they deem certain property lying within a specified area, to wit, within the distance of one-fourth of a mile from the limits of said park, to be specially benefitted by reason of its location, and in particular then and there notified the complainants, by their solicitor, who was then and there in attendance, that they deem the parcel of land which is mentioned in the said bill of complaint as being the residu-m of parcel numbered sixteen (16) on the recorded map of the Rock Creek park whereof the complainants are seized and possessed in the manner in said bill set forth to be specially benefitted by reason of the location of said park, and that it is the fixed and determinate purpose and intention of the defendants to forthwith assess said parcel in the proportion and to the extent that they deem the same to be, as aforesaid, specially benefitted, and that the defendants then and there, in evidence of their aforesaid notification and declaration of intent to levy said assessment, caused a minute to be made thereof in writing, of which a duly certified copy is hereunto annexed, marked "Exhibit A," and is prayed to be taken as part hereof; and the complainants further show that the said defendants, unless they shall be restrained in the meantime by the order of this honorable court, will forthwith proceed to levy and collect the proposed assessment upon their aforesaid parcel
21 of land as for alleged benefits resulting thereto by reason of the location of said Rock Creek park, by reason whereof, since the complainants are wholly without remedy at law, the title to their said real estate will be inevitably clouded; they will suffer

irreparable injury in respect of their ownership of said parcel of land, and they will be subjected to a multiplicity of suits by reason of the levy and attempted enforcement of said assessment.

To the end, therefore, that the said defendants may answer as well the matters charged in the original bill of complaint as in this supplemental bill, and that the complainants may have such relief against them as is prayed by the original bill—

And, in particular, that the defendants may be restrained by order of this honorable court during the pendency of this suit and forever thereafter from levying and collecting the said assessment against the property of your complainants as for benefits alleged to have specially resulted to said property by reason of the location and improvement of the said Rock Creek park:

May it please this honorable court to grant unto the complainants the writ of subpœna against the said Thomas Lincoln Casey, the said Charles F. Powell, the said Henry V. Boynton, the said Samuel P. Langley, and the said R. Ross Perry, commanding them and each of them to appear in this court at some certain day to be therein named to answer the premises and to abide by and perform such decree as may be passed therein; and, as in duty bound, your complainants will ever pray, etc.

MARY VAN RISWICK.
AVARILLA LAMBERT.

TALLMADGE A. LAMBERT,
Sol'r & of Counsel.

DISTRICT OF COLUMBIA, *To wit:*

We, Mary Van Riswick, Avarilla Lambert, and Martina Carr, on oath say that we have heard read the foregoing supplemental bill of complaint by us subscribed and know the contents thereof; that the facts therein stated of our personal knowledge are true, and the facts therein stated on information of others we believe to be true.

MARY VAN RISWICK.
AVARILLA LAMBERT.

Subscribed and sworn to before me this 27th day of February, A. D. 1895, by Mary Van Riswick & Avarilla Lambert.

[SEAL.] RUTLEDGE WILSON,
Notary Public.

EXHIBIT "A."

The ACTING CHAIRMAN: Gentlemen, it seems to the commission that, in so far as any definite result can be arrived at from the testimony taken thus far, there are two points upon which the commission may announce that its judgment has been determined:

22 First. Save in exceptional cases, which the commission cannot consider at present, there have been no special benefits accruing by reason of the location and improvement of the park to any land within the District of Columbia situated more

than a quarter of a mile in any direction beyond the nearest park limits.

Second. That while the commission cannot undertake to say that all lands abutting upon the park boundaries and within a quarter of a mile of those boundaries in any direction have been specially benefited by the location and improvement of the park, yet it can undertake to say that, in its judgment, the testimony taken thus far establishes the fact that there have been certain properties which, by reason of their outlook upon the park, have been so specially benefited.

If the property-owners generally desire to be heard upon either of those points the commission would be glad to hear them now; if the property-owners do not desire to be so heard, then Mr. Lambert, as attorney for the owners of the Van Riswick tract, is notified that in the opinion of the commission there is one such point upon the tract numbered sixteen, where the old Fenwick house is on the knoll.

In the opinion of the commission that tract, at least in that particular point, has been benefited by the location of the park, not only because of its proximity thereto, but because of its overlook of the park.

This is a specific announcement of the intention of the commission to assess special benefits, the amount of which it cannot determine until Mr. Lambert shall have been heard upon that particular piece of property. The announcement is made at this time that he may secure a standing in court, that he may bring the matter to the attention of Mr. Justice Cox. It is also made to save time and money to everybody concerned. Unless the commission be restrained it will levy a tax upon that particular piece of property, although the commission is not prepared to say what will be the amount of that tax.

Mr. LAMBERT: As I understand, there is a fixed determination to make the levy without naming the amount.

The ACTING CHAIRMAN: Yes; and, if not restrained, the purpose of the commission would be to proceed from day to day to hear testimony with respect to particular tracts which it may think are benefited in order to ascertain the amount of benefit.

The commission is dealing with a most indefinite thing, a thing in regard to which it is difficult to get any fixed standard as a guide. The commission has, therefore, decided to bring this matter to a conclusion, make this determination upon the evidence heard so far, and then proceed specifically in reference to the other tracts.

Mr. JOHNSON: Gentlemen of the commission, I am not clear from what has been announced as the view of the commission whether it is its purpose hereafter to proceed simply upon the question of what particular tracts will be assessed and how much, or on the question whether a benefit has or has not attached, which is still open
23 for consideration, and, if that be the case, whether the commission has reached a conclusion about that and the burden is to be upon the property-owners to remove it.

The ACTING CHAIRMAN: It was intended to make that clear. The conclusion is that there are certain points of land within this zone of a quarter of a mile which, by reason of their outlook upon the park, have been specially benefited. The commission does not now undertake to say that it is its judgment that all land within that zone of a quarter of a mile have been specially benefited; but in order to reach any definite result the commission will take up definite tracts upon which it knows that there are physical situations of commanding outlook over the park and proceed to assess special benefits in respect to them.

Mr. JOHNSON: I do not wish to be contentious. I simply wish to understand the conclusion of the commission.

The ACTING CHAIRMAN: The commission would be glad to hear any suggestion you may have to make.

Mr. JOHNSON: The proceeding thus far has been in this way: that witnesses have been called here and asked their opinions, more or less, in reference to specific property, not generally. Will the commission announce without further testimony in reference to the tax against it that with respect to a specific piece of property the commission had come to the conclusion that it is a subject of taxation and invite testimony from the property-owners on the subject, or whether it will take up a specific piece of property with the view of inquiring whether it will assess a benefit or not and have evidence offered on that topic first? In other words, what I want to understand is whether what the commission has heard in the way of testimony has placed it in such a position that it is able to proceed and form conclusions of its own upon the question of benefits, leaving it for the owners to come in and meet that testimony.

The ACTING CHAIRMAN: The commission has formed a conclusion to this extent: That wherever upon tracts within the distance of which I spoke there are points commanding an outlook upon the park, those points have been specially benefited. The commission does not know exactly what those physical situations are, and will take testimony about it. *It does know about one for a special reason.*

Mr. JOHNSON: The commission has reached the conclusion upon what it has heard that situations within a quarter of a mile of the park have a special advantage in the way of outlook over the park and are subject to assessment.

The ACTING CHAIRMAN: For the present it has. There may be others, *but those are at least.*

Mr. JOHNSON: Those within a radius of a quarter of a mile of the park have that advantage and are subject to assessment.

The ACTING CHAIRMAN: Yes.

Mr. JOHNSON: I do not know that objections are necessary, and you understand that anything I may suggest is intended to secure proper method of proceeding here.

The ACTING CHAIRMAN: We understand that.

24 Mr. JOHNSON: Lest it may be necessary, I now want to object to the commission reaching any conclusion as to any area or as to any specific situation in any area without first hearing the evidence of the property-owners upon the specific question as to

whether or not there has any benefit attached to any property, and in that connection I want to say that I will be prepared to offer the evidence of a large number of owners of real estate, dealers and brokers upon that subject, and in order to thoroughly protect myself in the premises it is my purpose to make application to the court upon the lines I indicated at the outset for compulsory process to get the attendance of those persons, to have them sworn by the clerk, and take their testimony under oath. That is for the purpose of showing, as I believe I can, by an overwhelming amount of testimony of most reliable persons of this District, that the assumption that a financial benefit has attached to any property anywhere in this District by the establishment of that park is not justified by the facts.

The ACTING CHAIRMAN: The matter is open for such hearing as the law may give you. An opportunity will be afforded you for that hearing.

The immediate question is in regard to Mr. Lambert's tract. If Mr. Lambert expects any further hearing outside of what we have already announced before appealing to the court, it is open to him; but, as at present advised, that is the judgment of the commission.

Mr. LAMBERT: In regard to the judgment of the commission (the fairness of which I fully appreciate and assume it to be in the line of providing for itself an authority upon the subject) I should feel much freer and much more certain of satisfying the court of its jurisdiction, looking upon this as a desire to have a test case, if the commission would see fit to levy an assessment if it feel that it has reached the point where it can do so.

The ACTING CHAIRMAN: The commission cannot do that without sending witnesses out there to examine property definitely and taking their opinion as to the amount.

Mr. LAMBERT: Of course, I understand that any assessment you may make would depend——

The ACTING CHAIRMAN: This commission is composed of the Chief of Engineers of the U. S. Army, the secretary of the Smithsonian Institution, the Engineer Commissioner of the District of Columbia, of General Boynton, and myself. I do not think any one of those gentlemen has any more intuitive knowledge as to the value of this property than I have. I am perfectly ignorant and incompetent to act until enlightened by definite testimony.

Mr. LAMBERT: The only embarrassment I have is the one I have suggested, whether the intimation of the intentions of the commission to do this thing is sufficient to overcome the objection of the court.

The ACTING CHAIRMAN: If we could make it any more definite we would be very glad to do so, but we cannot levy the tax without hearing witnesses on the subject.

Mr. LAMBERT: I will immediately give the matter the best consideration I can and act upon it, but maybe I do not make myself understood. My position is that the commission advise itself upon this particular fact. For instance, you will take such testimony as you desire upon this particular tract and

form an estimate about the tax you will impose and impose it, unless you feel that you will have to postpone the assessment until you shall have examined all the tracts. You could go at once upon the consideration of this tract.

The commission adjourned until Monday, March 4, 1895, at 1 o'clock p. m.

I certify that the above is a true transcript of a part of the proceedings of the commission to select the land for Rock Creek park at their meeting on Thursday, February 21st, 1895.

R. ROSS PERRY,
Acting Commissioner.

WEDNESDAY, *February* 27, 1895.

Court meets pursuant to adjournment.

* * * * * * *

MARY VAN RISWICK *et al.*
vs.
T. L. CASEY *et al.*
} 16171, Equity Docket 38.

The defendant is hereby restrained as prayed in the within-mentioned bill until further order, to be made, if at all, after a hearing, which is fixed for the 4th day of March, 1895, of which take notice.

By the court:

W. S. COX, *Justice.*

Order Granting Motion for Injunction.

Filed March 12, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
THOMAS LINCOLN CASEY *et al.*
} In Equity. No. 16171, Docket 38.

This cause coming on to be heard upon complainants' motion for injunction *pendente lite*, as prayed for in and by their supplemental bill of complaint, and being argued by counsel and duly considered by the court, it is thereupon, upon consideration thereof by the court, this twelfth day of March, A. D. 1895, ordered, adjudged, and decreed that the said motion be, and the same is hereby, allowed, and that the defendants be, and they are hereby, restrained and enjoined during the pendency of these proceedings from levying an assessment as for benefits upon the lands of complainants mentioned and described in the original bill of complaint.

W. S. COX, *J.*

26 *Amendment of Supplemental Bill.*

Filed March 16, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants, *vs.* THOMAS LINCOLN CASEY *et al.*, Defendants. } No. 16171, Eq. Doc. 37.

And now come the complainants, by Tallmadge A. Lambert, Esq., their solicitor, and before copy taken of their original and supplemental bills of complaint or either of them, and before answer or other pleading filed to said supplemental bill of complaint, amend their said supplemental bill of complaint in manner and form following, to wit, by striking therefrom all and singular the words intervening between the words "reduced to writing," at the eighteenth line from the top of the second page, and the words "the defendants," at the fourteenth line from the top of the third page thereof; also by inserting the word "that" before the last-mentioned words at the said fourteenth line from the top of the third page thereof, and by eliding the word "nevertheless" immediately after the said words, "the defendants," at the fourteenth line from the top of the third page thereof.

TALLMADGE A. LAMBERT,
Solicitor for Complainants.

Opinion and Decision on Motion of Injunction.

Filed April 16, 1895.

In the Supreme Court of the District of Columbia.

VAN RISWICK *et al.* *vs.* THE ROCK CREEK PARK COMMISSION. } In Equity. No. 16171.

Opinion by Mr. Justice Cox.

WASHINGTON, D. C., *April 2nd*, 1895.

The bill in this cause was filed to obtain an injunction against the assessment of benefits upon the property of the complainants by the commissioners appointed under an act entitled "An act authorizing the establishing of a public park in the District of Columbia."

When the original bill was filed it seemed to me to be premature and I denied the relief, without prejudice. Subsequently a supplemental bill was filed in which the following proceedings are shown to have taken place before the commissioners:

27 "The ACTING CHAIRMAN: Gentlemen, it seems to the commission that, in so far as any definite result can be arrived at from the testimony taken thus far, there are two points upon which the commission may announce that its judgment has been determined:

1st. Save in exceptional cases which the commission cannot consider at present, there have been no special benefits accruing by reason of the location and improvement of the park to any land within the District of Columbia situated more than a quarter of a mile in any direction beyond the nearest park limits.

2nd. That while the commission cannot undertake to say that all lands abutting upon the park boundaries and within a quarter of a mile of those boundaries in any direction have been specially benefitted by the location and improvement of the park, yet it can undertake to say that in its judgment the testimony taken thus far establishes the fact that there have been certain properties which, by reason of their outlook upon the park, have been so specially benefitted.

If the property-owners generally desire to be heard upon either of these points, the commission would be glad to hear them now; if the property-owners do not desire to be so heard, them Mr. Lambert, as attorney for the owners of the Van Riswick tract, is notified that in the opinion of the commissioners there is one such point upon the tract numbered sixteen, where the old Fenwick house is on the knoll.

In the opinion of the commission that tract, at least in that particular point, has been benefitted by the location of the park, not only because of its proximity thereto, but because of its overlook of the park.

This is a specific announcement of the intention of the commission to assess special benefits (the amount of which it cannot determine until Mr. Lambert shall have been heard) upon that particular piece of property. The announcement is made at this time that he may secure a standing in court, that he may bring the matter to the attention of Mr. Justice Cox. It is also made to save time and money to everybody concerned. Unless the commission be restrained, it will levy a tax upon that particular piece of property, although the commission is not prepared to say what will be the amount of that tax.

Mr. LAMBERT: As I understand, there is a fixed determination to make the levy without naming the amount?

The ACTING CHAIRMAN: Yes."

The authority of the commission to levy benefit assessments is derived from the sixth section of the act of Congress aforesaid, which contains two clauses, the differences between which are to be noted. The first clause is:

"That the commission, having ascertained the cost of the land, including expenses, shall assess such proportion of such cost and expenses upon the lands, lots, and blocks situated in the District of

Columbia especially benefitted by reason of the location and
28 improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate.

The second clause is:

"If said commission shall find that the real estate in said District directly benefitted by reason of the location of the park is not benefitted to the full extent of the estimated cost and expenses, then they shall assess each tract or parcel of land specially benefitted to the extent of such benefits as they shall deem the said real estate specially benefitted."

It will be observed that the second clause provides for the contingency that real estate in the District of Columbia is not benefitted to the full extent of the estimated cost and expenses, and it might hence be inferred that the first clause was intended to provide for the contingency that the benefits did extend to the whole amount of the cost and expenses, and that the first clause intended to direct the whole of that cost to be assessed upon the several tracts, lots, or blocks of land situated in the District of Columbia in proportion to the benefits resulting to them respectively.

But the language of the first clause is absolute and unconditional. "The commission *shall assess*" is the language. The question is, What shall they assess? Can it mean that they shall assess the whole cost, apportioning it among the several tracts with reference to their *relative* benefits and without reference to their *actual* benefits? If so, it would, in the first place, be plainly unconstitutional, because it would make the several tracts pay for benefits they never received, and, in the next place, it would be in conflict with the second clause, which limits the assessments to the extent of the actual special benefit. Can the first clause mean that there shall be assessed upon the several tracts just such proportion *or portion* of the entire cost as the actual pecuniary benefit to them will amount to? If so, what was the use of the second clause, for that is just what that was intended to express. But even here, again, there would be a contradiction between the first and second clauses, for the one directs the assessment to be made with reference to the *location and improvement* of the park, and the other with reference to the *location* only. We must assume that Congress did not intend to direct the same thing to be assessed by two different clauses, and still less to direct it to be done in two different ways.

Bearing this in mind, when we examine the first clause we find that it has an uncompleted direction making it entirely meaningless. It directs, not that the whole cost shall be assessed, but that "*such proportion*" of cost and expenses shall be assessed. What that proportion is is not stated. Instead of saying "such proportion as may be determined by the commission," or as may be determined by one or other of certain considerations the sentence is left incomplete, and directs simply the assessment of "such proportion" without in any other way defining the proportion. If the court were asked to direct the commissioners by mandamus to discharge
the duty devolved upon them by this clause, what direction
29 could the court give? What proportion could it direct the

commissioners to assess upon the property? It seems evident that the clause is too uncertain to be executed, either voluntarily by the commission or under compulsion from the court, and they must be held to derive no authority to act under that clause.

There is a further difference to be noted between the two clauses. The assessment under the first clause was to be made with reference to the benefits resulting from both the *location and improvement.* In the second clause each tract is to be assessed to the extent of the benefits derived only from the *location* of the park. At the present time it is quite plain that no benefits are derived from the location, because the adjacent owners of property have nothing which they had not before. For this reason it appears that the commission have declared their intention of assessing with reference to both location and improvement. Their whole authority is derived under this second clause, and that does not authorize them to assess with reference to both *location and improvement*, and so far their proposed assessment is therefore without authority of law.

But if it could be held to authorize such proposed assessment, the standard by which they are to be guided is so uncertain as to make the execution of the law as impossible under this as under the former clause. When a street is by municipal ordinance directed to be opened, graded, paved, or otherwise improved, we all know exactly what is to be done and what the effect will be upon adjacent property; but there is no law providing for the improvement of the park. No system of improvement has been adopted; no money has been appropriated for the purpose of making improvements, and no one knows that any ever will be appropriated. The only standard which the commissioners would have for estimating benefits with reference to improvements would be found in their imagination as to what may be done at some indefinite time in the future. It is impossible that a just appraisement of benefits could be made on that basis. Here, also, if the court were to attempt to enforce the duty charged upon the commissioners, it would find it equally impossible with such proceeding under the first clause, as already suggested.

I think, therefore, that the assessment proposed to be made by the commissioners is not authorized by the statute, and as it would create a charge upon the record on the property of the complainants it ought to be enjoined, the question as to the jurisdiction of the court in that respect having been waived in the argument for the purpose of bringing before the court the naked question of the authority of the commissioners.

Again, it seems to me that the assessment of values and the assessment of benefits were intended to be parts of one and the same transaction; that the assessment of benefits was to immediately follow the ascertainment of the cost of the land and the expenses. The language of the second clause is, not that after the land shall have been paid for the assessment shall take place, but that the commissioners, *having ascertained the cost, shall assess*, &c.

In the second clause they are to ascertain whether the property is or is not benefitted, and, if so, whether it is benefitted

to the extent of the *estimated cost and expenses*. This language shows that the assessment of benefits was to take place immediately after the ascertainment of the cost or the estimated cost, and was not to be postponed until after payment for the land.

Another evidence of that is found in a later clause, which directs that the money collected under these assessments shall be paid to any persons entitled thereto as compensation for land or services. Here follow certain incongruities in the law. The assessment, it is said, shall be divided into four equal installments and may be paid by any party interested in full, or in one, two, three, and four years, with six per cent. interest. All payments are to be made to the Treasurer of the United States, who shall keep the account as a separate fund. In case the assessments are not paid, they were to be collected by the collector of the District in the same manner as delinquent taxes due to the District of Columbia, and although the assessments and the taxes might thus be postponed, the proceeds were directed to be paid for the land or services, whereas it is plain to any one's common sense that the holders of the land could not be postponed until such collection in the payment for their lands, but were entitled to be paid in cash.

But it is also provided that any party so interested might pay in full, and in such case it is obvious that the money so received was primarily applicable to the payment for the land. The appropriation from the Treasury of the United States is of $1,200,000, *or so much thereof as may be necessary*, and this appropriation is made "out of any money in the Treasury not otherwise appropriated." The act then appropriates two distinct funds to the payment for these lands—first, what should be collected from assessments, and, next, from the general unappropriated money in the Treasury. These two features of the law can only be reconciled by assuming that the proceeds of the assessments, so far as they would go, were to be applied first, and only so much as it might be necessary, in addition thereto, out of the general funds in the Treasury.

All this strongly implies that the assessments should be made immediately after the valuation, in order to ascertain how much should be paid from the Treasury at large, the assessments being directed to be kept by the Treasurer as a separate fund to be applied to this object. It was therefore evidently not intended that the money should first be paid out of the Treasury of the United States and then afterwards they should make the assessments. Particularly cannot that be the case under existing circumstances. The law requires that the District of Columbia should reimburse the Treasury of the United States one-half of the amount paid out of the Treasury in four equal annual instalments. That reimbursement, so far as the time which has since elapsed has allowed, it is understood, has been made by the District. If the assessments for benefits can be made now, it is the duty of the party assessed to pay the whole amount into the Treasury of the United States,
31 and the effect will be that as to one-half of the amount the Government will be paid twice—that is, it has already received payment from the District of Columbia, and would receive

payment again from the parties assessed. The commission has no authority to apportion this assessment between the District and the Government.

It may be that Congress by additional legislation might, if there were no constitutional objection, still direct these assessments to be made and apportioned between the United States and the District of Columbia, but under the existing law it could not be made at this late date without involving the parties assessed in this obligation to pay to the United States what they have already received.

The commissioners, as I understand, drew orders upon the Treasury in favor of the parties entitled to compensation for their lands, and they were paid by the Treasury on those orders as vouchers. The law really only authorized the commissioners to draw upon the money collected from assessments. Perhaps by fair implication they were authorized also to draw so much as the assessments failed to satisfy of the demands of the land-owners, but the effect of their drawing upon the Treasury for the whole amount due for the land was a virtual ascertainment by them that there were no benefits to be assessed, because they had no authority otherwise to draw upon the Treasury for the whole compensation due to the owners.

In addition to these considerations, I have considerable doubt whether this law is strictly constitutional. I do not mean to say that it is in conflict with any direct prohibition of the Constitution, but that it is probably foreign to the spirit of that instrument. There are instances in which the fundamental principles of our Government are offended by legislation where no express prohibition is found. For example, the Supreme Court have held that a State has no right to take private property for the use of other private persons instead of for public use. The same would doubtless be held to be contrary to the Constitution of the United States if attempted under congressional legislation. When a street is opened in a city under a municipal authority it is often done for the express purpose of benefiting the property through which it is opened as well as the public, and the benefits to the property abutting upon it are so manifest that no one denies the right to assess the abutting property-owners for those special benefits. They acquire an easement in the new street over and above that which the public has. They have a right to build and sell with reference to it, and it can never be afterwards closed up as against them, while it may be as against the public. The same may be said of a park in the city. The owners fronting upon it immediately acquire the ben-fit of light, air, prospect, and, in a certain sense, privacy also, in the shape of immunity from the prying eyes of opposite neighbors, of which privileges they cannot be deprived. But here is a park established in the cou-try, not at the instance or request of adjacent proprietors, not for their benefit, but declared to be a public park, a pleasure ground for the benefit and enjoyment of the people of the United States, and in which the adja-
32 cent owners acquire no easement different from that of the public. Where a great improvement is made for the benefit

of the public it does sometimes happen that a fractional part of that public *are* so far benefitted that it is proper to apportion a larger part of the burden to them, as, for example, where a court-house is located in a country town. While the expense is chargeable to the county at large, it has sometimes been properly held that an exceptional proportion of it might be charged upon the town. So in the case of The County of Mobile *vs.* Kimball, 102d U. S., 691, it was held that the cost of improving the harbor of Mobile, while chargeable to the whole county, might be specially charged against the city of Mobile; and in this same sense the District of Columbia is charged with one-half of the cost of this improvement, though it is declared to be for the use of the people of the United States; but in this case it is only the smaller part of the entire public benefitted who are supposed to be exceptionally benefitted and who are expected to bear the larger proportion of the burden of the entire public.

But when it comes to assessing individuals for public improvements, the question seems to be different. Suppose, for example, a court-house or a public monument or post-office should be erected in a town and the private property of individuals adjacent to it should be specially taxed for the supposed greater convenience which they enjoy of access to the court-house or post-office, or the privilege of gazing upon the public monument, it would at once be seen that great injustice had been done. It does seem to me that this would be a system of taxation which would not conform to the spirit of our Constitution. It might as well have been held proper to assess the buildings opposite to this court-house for the pleasure of gazing upon the Lincoln monument, if that monument had been erected by public authority.

There are several cases the opinions of which embody my ideas on this subject, to which I will refer without specially quoting from them. (54th Missouri, 457; 65th Pennsylvania State, 146; 69th Pennsylvania State, 352; 102nd U. S., 691.)

Upon these grounds I think the injunction should be granted.

W. S. COX, *J.*

Motion to Substitute William P. Craighill for Thomas L. Casey.

Filed May 16, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
THOMAS L. CASEY *et al.* } In Equity. No. —.

Now come the complainants, by their attorney and counsel, and suggest the retirement of the defendant Thomas L. Casey from active service in the Army of the United States and the appointment of William P. Craighill, as Chief of Engineers of the
33 United States Army, in the place and stead of the said Thomas L. Casey, retired as aforesaid, and move the court to

substitute the said William P. Craighill for the said Thomas L. Casey as a party defendant to this cause.

TALLMADGE A. LAMBERT,
Of Counsel of Compl'ts.

Order Substituting William P. Craighill for Thomas L. Casey.

Filed May 16, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.* *vs.* THOMAS L. CASEY *et al.* } In Equity. No. 16171, Doc. 38.

Upon the suggestion and motion of the complainants, it is by the court, this sixteenth day of May, 1895, ordered that William P. Craighill, Chief of Engineers of the United States Army, be, and he hereby is, substituted for Thomas L. Casey, retired, as a party defendant to this cause.

W. S. COX, *J.*

Answer of Defendants.

Filed July 24, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants, *vs.* WILLIAM P. CRAIGHILL, Chief of Engineers of the United States Army (by Substitution in the Place and Stead of Thomas Lincoln Casey, Late Chief of Engineers of the said Army, an Original Defendant Herein); Charles F. Powell, Engineer Commissioner of the District of Columbia; Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting the Commission Created under the Act of Congress Approved September 27, 1890, Entitled "An Act Authorizing the Establishment of a Public Park in the District of Columbia." } In Equity. No. 16171, Docket 38.

The answer of the above-named defendants to parts of the supplemental bill of complaint (as amended) in the above cause and their demurrer to the residue thereof.

The said defendants, answering so much and such parts of the said amended supplemental bill and of the original bill of
34 complaint (which has been made part of said supplemental

bill) as they are advised it is material or necessary to make answer unto, say:

1. They admit the averments of the first paragraph.

2. They admit the averments of the second paragraph of the original bill, with this qualification, that since the filing of said supplemental bill Thomas Lincoln Casey, Chief of Engineers of the United States Army, one of the defendants named in said original bill and who was *ex officio* a member of the commission created by said act of Congress, has been succeeded as such Chief of Engineers by William P. Craighill, and that he, the said William P. Craighill, thereupon became *ex officio* a member of said commission, and that as such he has been made defendant in these proceedings in the place and stead of the said Thomas Lincoln Casey by order of the court heretofore passed therein.

3. They believe the portions of said act of Congress of September 27, 1890, referred to in the third paragraph of the original bill are correctly set forth in said paragraph, but for greater certainty in the premises refer to the act itself.

4. They admit the averments of the fourth paragraph of the original bill.

5. They admit the averments of the fifth paragraph of the original bill.

6. In answer to the averments of the sixth paragraph of the original bill, they say that title in fee simple to several of the tracts shown on said map was acquired by the United States under the said act of Congress through agreement with the owners of the same as to the purchase-money, the payment thereof to the respective owners of said tracts and conveyances of the said tracts by said owners to the United States, and that the proceedings had in this court upon the petition of the commission related only to the remainder of the tracts shown on the said map, and which could not be acquired by agreement with the respective owners thereof; and, further answering said paragraph, they say that, by reason of the fact that the sums so paid out as aforesaid and the aggregate of the values returned by the commissioners appointed by the court to appraise exceeded the amount of the appropriation made by said act for the acquisition of lands for said park, it became necessary to exclude from the limits of the park so defined by said map several of the tracts appraised in order that the cost of the land to be taken for said park should be brought within the said appropriation; that no new or formal modified map was made or caused to be made by the park commission showing the diminished area of said park, and that the recorded map, as modified by the exclusion of said tracts, still constitutes the map of the said park. These defendants believe that otherwise the averments of said paragraph are substantially correct, yet, as they are matter of record in the said proceeding, they refer to the same for greater certainty in the premises.

7. They admit the averments of the seventh paragraph of the original bill.

35 *8.* They admit the averments of the eighth paragraph of the original bill.

9. They admit the averments of the ninth paragraph of the original bill.

10. They admit the final and definite establishment of the park, as averred in paragraph 10 of the original bill, and that the same has passed under the permanent and joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the Army, as provided by said act of Congress, but they deny that thereby the power and authority conferred upon these defendants by said act of Congress to make assessments for special benefits has been in any manner impaired.

13. They admit the averments of the thirteenth paragraph of the original bill.

14. They deny so much of paragraph fourteen of the original bill as avers, directly or indirectly, that these defendants are *functus officiis*, and that they no longer have the power to make assessments for special benefits, as contemplated by said act, and that no just or legal *criteria* now exists for the making of such assessments, and that no special benefits have in fact inured to the said land of complainants or any other land in the District of Columbia by reason of the establishment of said park.

15. They deny so much of paragraph fifteen of the original bill as avers, directly or indirectly, that it is a "generally admitted fact" that no benefits have inured to the said property of the said complainants by reason of the location and improvement of the said park, and that no special benefits have inured to any real estate in the District of Columbia by reason thereof.

16. Answering the sixteenth paragraph of the original bill, they say that, in so far as they have proceeded in the performance of their duty under said act of Congress with respect to the matter of assessments for special benefits, their conclusions are set forth in the extract from the minutes of their proceedings, marked Exhibit "A" to complainants' supplemental bill, which extract they pray may be read and considered as a part of this their answer. They deny that they have made any assessments or taken any further step in the direction of making such assessments than as indicated in said extract.

And, further answering, these defendants say that they admit the fact to be as averred in said supplemental bill, that the court did sustain the demurrer interposed to the original bill, with leave to the complainants to renew their applications for an injunction at a later stage in the proceedings of these defendants in the performance of the duty enjoined upon them by said act of Congress, of ascertaining what real estate has been specially benefited in the premises and of assessing such benefits thereon, and they admit that having ascertained the cost of the land taken for said park, including expenses, they have, in the performance of their said duty and with a view to the assessment of such special benefits in accordance with the requirements of said act of Congress, taken the further steps set

forth in said supplemental bill, and that in the performance
36 of the said duty and in the exercise of the power conferred upon them by said act of Congress they did find and determine that no land within the District of Columbia situated more than one-quarter of a mile in any direction beyond the nearest park limit had been specially benefited by reason of the location and improvement of the park, and that they did further find and determine that a portion of said tract sixteen (16) had been so benefited by the location and improvement of the park, not only by reason of its proximity thereto, but because of its overlook of the said park; and they admit that said Exhibit "A" to said supplemental bill is a correct extract from the minutes of the proceedings of these defendants; and they further admit that unless finally restrained by the order and decree of this honorable court they will further proceed in ascertaining and determining what lands within the said quarter-mile limit have been so specially benefited and make assessments thereon agreeably to the said act of Congress.

And these defendants say that to paragraphs eleven and twelve of the original bill, and to so much of paragraphs fourteen and fifteen thereof as is not above answered, and to such portions generally of the said supplemental bill and original bill as are not above answered, they do demur, and for cause of demurrer show that the complainants have not in and by the same made or stated such a case as entitles them to any relief in a court of equity; and these defendants pray the judgment of the court as to such parts of the bill as they have so demurred to as aforesaid, and whether they shall be compelled to make any other or further answer thereto.

A. A. BIRNEY,
Attorney of the United States in and for the District of Columbia, Solicitor for the said Defendants.

Affidavit and certificate waived.

TALLMADGE A. LAMBERT,
Solicitor for Complainants.

Replication.

Filed July 24, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants, *vs.* WILLIAM P. CRAIGHILL, Chief of Engineers of the United States Army (by Substitution for Thomas Lincoln Casey, Retired), *et al.*, Defendants.	No. 16171, Eq. Doc. 38.

The complainants join issue upon the defendants' answer.

TALLMADGE A. LAMBERT,
Sol'r and Counsel for Compl'ts.

37 *Precipe for Hearing.*

Filed July 24, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants, *vs.* WILLIAM P. CRAIGHILL, Chief of Engineers of the United States Army (by Substitution for Thomas Lincoln Casey), *et al.*, Defendants.	No. 16171, Eq. Doc. 38.

The clerk will set this cause for hearing upon the original and supplemental bills of complaint, the answer (coupled with demurrer) thereto, and replication.

TALLMADGE A. LAMBERT,
Sol'r and Counsel for Compl'ts.

JULY 19, 1895.

To the clerk:

I consent to the hearing as above directed.

A. A. BIRNEY,
Attorney of the United States and for the District of Columbia, Solicitor for Defendants.

Final Decree Granting Injunction.

Filed September 30, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*, Complainants, *vs.* WILLIAM P. CRAIGHILL, Chief of Engineers of the United States Army (by Substitution for Thomas Lincoln Casey, Retired), *et al.*, Defendants.	16171, Eq. Doc. 38.

This cause being submitted by consent and without argument upon the original and supplemental bills of complaint, the answer (coupled with demurrer) thereto, and replication, and being duly considered by the court, and it appearing to the court that for the reasons stated in the opinion heretofore filed in this cause the complainants are entitled to the relief which they pray in and by
38 their original and supplemental bills of complaint, it is thereupon, upon consideration thereof, by the court, this thirtieth day of September, 1895, ordered, adjudged, and decreed that the de-

murrer in part to the original and supplemental bills of complaint be, and the same is hereby, overruled; and it is further ordered, adjudged, and decreed that the restraining order heretofore allowed and passed in this cause be, and the same is hereby, made perpetual, and that the defendants be, and they are hereby, perpetually enjoined, prohibited, and restrained from assessing the land of the complainants in the manner and form and for the object and purpose set forth and complained of in and by their said original and supplemental bills of complaint or in any manner or for any purpose whatsoever.

From this decree the defendants pray an appeal to the Court of Appeals of the District of Columbia, and the same is allowed.

W. S. COX, *J.*

Waiver of Citation and Bond of Appeal.

Filed October 12, 1895.

In the Supreme Court of the District of Columbia.

MARY VAN RISWICK *et al.*
vs.
WILLIAM P. CRAIGHILL *et al.*, Rock Creek Park Commission. } In Equity. No. 16171.

On behalf of the complainants, the filing of any bond on the appeal of the defendants from the decree of the special term of the supreme court of the District of Columbia is hereby waived and the service of citation is also waived.

TALLAMDGE A. LAMBERT,
Sol'r for Compl'ts.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 69, inclusive, to be true copies of originals in cause No. 16171, in equity, wherein Mary Van Riswick, Avarilla Lambert, and Martina Carr, children and sole heirs-at-law of John Van Riswick, deceased, are complainants, and Thomas Lincoln Casey, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, constituting and composing the commission to select the land for Rock Creek park, are defendants, as the same remain upon the files and records of said court.

39 In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 18th day of October, A. D. 1895.

Seal Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 521. William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, constituting and composing the commission to select the land for Rock Creek park, appellants, *vs.* Mary Van Riswick, widow, Avarilla Lambert and Martina Carr, children and sole heirs-at-law of John Van Riswick, deceased. Court of Appeals, District of Columbia. Filed Nov. 13, 1895. Robert Willett, clerk.

40 MONDAY, *February 3rd, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow; AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased. } No. 521.

Upon motion of counsel for the respective parties, the above-entitled cause is assigned for hearing on Monday, February 17th, A. D. 1896.

MONDAY, *February 17th, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow; AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased. } No. 521.

The argument in the above-entitled cause was commenced by Mr. H. T. Taggart, attorney for the appellants, and was continued by Messrs. W. J. Lambert and T. A. Lambert, attorneys for the appellees.

41 TUESDAY, *February 18th, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow; AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased.
} No. 521.

The argument in the above-entitled cause was continued by Mr. T. A. Lambert, attorney for the appellees, and was concluded by Mr. H. T. Taggart, attorney for the appellants.

42 WILLIAM P. CRAIGHILL *et al.*, Appellants,
vs.
MARY VAN RISWICK, Widow, *et al.*
} No. 521.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

This — an appeal from a decree in equity of the supreme court of the District of Columbia awarding an injunction against the Rock Creek Park Commissioners to restrain them from levying an assessment on certain lands of the appellees adjoining the park for supposed benefits accruing to the lands from the location of the park.

By an act approved February 27, 1890 (26 Stat. 492), Congress provided for the acquisition by the United States of a certain tract or tracts of land, within certain specified limits, extending along both sides of Rock creek, in the District of Columbia, to be "perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek park," with the proviso that the whole tract to be acquired should not exceed 2,000 acres, nor the total cost thereof the sum of $1,200,000, which sum was appropriated by the act to be used in payment for the land and for the incidental expenses of its acquisition.

Provision was made in the act for the appointment of the Engineer-in-chief of the Army, the Engineer Commissioner of the District of Columbia, and three citizens to be appointed by the President of the United States, as a commission to locate the park; to prepare an accurate map thereof, which should show the location, quantity, and character of each parcel of private property that might be required, with the names of the respective owners inscribed thereon; to cause such map to be recorded among the public records of the District of Columbia; and thereafter to conduct the proceedings for the acquisition of the land, which was to be secured either by purchase or by condemnation. It was provided farther that, upon the recording of the map, the several tracts of land therein embraced should "be held as condemned for public uses, and the title thereof

vested in the United States, subject to the payment of just compensation, to be determined by said commission and approved by the President of the United States;" and also that, if the commission should be unable to reach an agreement with the respective owners "to purchase all of the land so selected within thirty days after such condemnation at the price approved by the President of the United States," it should, at the expiration of that period, "make application to the supreme court of the District of Columbia by petition at a special or general term, for an assessment of the value of such land as it has been unable to purchase," with a description thereof, specification of the owners, etc. It was made the duty of the court, upon the filing of such petition, to appoint three commissioners to appraise the value of the land therein mentioned, and upon such appraisement to determine the value; also to direct the time and manner in which possession of the condemned property should be taken. And provision was made that, when the President of the United States, who was also authorized to intervene in the matter, should decide the valuation to be reasonable, payment should thereupon be made to the owners, and the United States should be deemed to have a valid title to the land. In the event of the refusal of the owner to take the amount of the valuation, or in the event of difficulty in regard to the title, the money was to be paid into court. Upon the payment of the money or the deposit thereof in the contingencies mentioned, possession was to be taken for the United States. One-half of the cost and expenses was to be reimbursed to the United States out of the revenues of the District of Columbia.

It was then provided by section 6 of the act, which is the part of the statute that has given rise to the present controversy, that the commission should proceed to make an assessment for special benefits on such property in the District of Columbia as would be benefited by the location and improvement of the park; and the mode was prescribed by which the assessment was to be made and enforced. This section, with the omission of such parts as are unnecessary to the present controversy, is as follows:

"SEC. 6. That the commission having ascertained the cost of the land, including expenses, shall assess such proportion of such cost and expenses upon the lands, lots, and blocks situated in the District of Columbia specially benefited by reason of the location and improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate.

"If said commission shall find that the real estate in said District directly benefited by reason of the location of the park is not benefited to the full extent of the estimated cost and expenses, then they shall assess each tract or parcel of land specially benefited to the extent of such benefits as they shall deem the said real estate specially benefited. * * * When the assessment shall be completed, it shall be * * * filed in the office of the clerk of the supreme court of the District of Columbia. The commission shall apply to the court for a confirmation of said assessment, giving at least ten days' notice of the time thereof by publication in one daily

newspaper published in the city of Washington, which notice shall state in general terms the subject and the object of the application.

"The said court shall have power, after said notice shall have been duly given, to hear and determine all matters connected with said assessment; and may revise, correct, amend, and confirm said assessment, in whole or in part, or order a new assessment in whole or in part, with or without further notice, or on such notice as it shall prescribe; but no order for a new assessment in part, or any partial adverse action, shall hinder or delay confirmation of the residue, or collection of the assessment therefrom. Confirmation of any part of the assessment shall make the same a lien on the real estate assessed.

"The assessment when confirmed, shall be divided into four equal installments, and may be paid by any party interested in full or in one, two, three, and four years, on or before which times all shall be payable, with six per centum annual interest on all deferred payments. All payments shall be made to the Treasurer of the United States, who shall keep the account as a separate fund. The orders of the court shall be conclusive evidence of all previous proceedings necessary to the validity thereof, and of all matters recited in said orders. The clerk of said court shall keep a record of all proceedings in regard to said assessment and confirmation. * * * In case assessments are not paid as aforesaid the book of assessments certified by the clerk of the court shall be delivered to the
43 officer charged by law with the duty of collecting delinquent taxes in the District of Columbia, who shall proceed to collect the same as delinquent real estate taxes are collected. * * *

"All money so collected may be paid by the Treasurer on the order of the commission to any person entitled thereto as compensation for land or services. Such order on the Treasurer shall be signed by a majority of the commission and shall specify fully the purpose for which it is drawn. If the proceeds of assessment exceed the cost of the park, the excess shall be used in its improvement, under the direction of the officers named in section 8, if such excess shall not exceed the amount of $10,000. If it shall exceed that amount that part above $10,000 shall be refunded rateably. Public officers performing any duty hereunder shall be allowed such fees and compensation as they would be entitled to in like cases of collecting taxes. The civilian members of the commission shall be allowed ten dollars per day each for each day of actual service. Deeds made to purchasers at sales for delinquent assessments hereunder shall be *prima facie* evidence of the right of the purchaser, and any one claiming under him, that the real estate was subject to assessment and directly benefited, and that the assessment was regularly made; that the assessment was not paid; that due advertisement had been made; that the grantee in the deed was the purchaser or assignee of the purchaser, and that the sale was conducted legally.

"Any judgment for the sale of any real estate for unpaid assessment shall be conclusive evidence of its regularity and validity in all collateral proceedings, except when the assessment was actually

paid; and the judgment shall estop all persons from raising any objection thereto, or to any sale or deed based thereon, which existed at the date of its rendition, and could have been presented as a defense to the application for such judgment."

In pursuance of this act the park commission was duly appointed and entered upon the performance of its duties. It selected the land, and filed and recorded a map of it. Some of the tracts comprised in the map were acquired by purchase in pursuance of agreement with the owners; and for the acquisition of the other tracts, in reference to which agreement could not be had, a petition was filed in the supreme court of the District in accordance with the requirements of the act, for an appraisement of their value and their condemnation to the use of the United States.

Appraisers were appointed by the court. Upon the return of their report, it was found that the appropriation was not sufficient to pay for all the land selected, and some of the tracts were excluded, therein comprising two parcels, designated on the map as 13 and 16, belonging to the appellees in this cause. The money for the tracts that were taken was paid into court.

The proceedings in court for the acquisition of the lands not purchased by agreement were contested by some of the owners upon various grounds; and the proceedings were finally carried to the Supreme Court of the United States upon writ of error.

There the decision of the supreme court of the District of Columbia upon the petition filed by the park commissioners was affirmed. Shoemaker *v.* United States, 147 U. S., 282. Thereafter the fund in court was paid out to the respective owners upon reports of a special auditor; the lands became the property of the United States; and the park was finally established and turned over to the control of the officers named in the seventh section of the act to take charge of it, namely, the Chief of Engineers of the United States Army and the Commissioners of the District of Columbia.

Apparently, however, the duties of the park commissioners were not yet at an end. They were required by section 6 of the act to make an assessment for special benefits accruing by reason of the establishment of the park; and this they now proceeded to perform. They gave public notice of their intention to assess under this section; and announced that, on a day designated, they would first hear testimony as to the extent of surrounding land affected beneficially by the location and improvement of the park. The appellees and others, who were owners of adjoining lands, appeared and entered a protest against any proceeding by the commission to make any such assessment as they had proposed to make, on the ground that the land had already been taken and paid for, and no assessment was required for any further payment; that the only purpose of assessment, as specified, was to pay for the land and expenses, all of which already had been defrayed; that the powers and duties of the commission were at an end; that no special benefits had accrued to any of the lands in question, inasmuch as there had been no improvement whatever of the proposed park, and no change whatever from the

previous conditions; that the section of the act in regard to assessment was conflicting, meaningless, and unintelligible, and therefore incapable of enforcement; and that the principle of assessment for supposed benefits in such cases was erroneous and radically vicious.

The commission thereupon was adjourned for a time, it was understood, in order to take the opinion of the Attorney General of the United States on the question raised. This opinion the Attorney General declined to give; and it was supposed that the commission would then proceed with the work of assessment.

At this juncture the appellees commenced the present proceedings by filing their bill in equity in the supreme court of the District of Columbia to restrain the commissioners, by injunction, from further action in the way of levying an assessment on the property of the complainants; and the claim was set up that section 6 of the act was repugnant to the Constitution of the United States, and therefore void.

To this bill a demurrer was filed by the United States district attorney as solicitor for the park commissioners; and the demurrer was sustained on the ground that the application for injunction was premature. The cause was retained, however, with leave to the complainants to renew their application by supplemental bill or otherwise at a later stage of the proceedings of the park commissioners.

The park commissioners continued to hold their sessions; and on February 21, 1895, formally announced that they deemed certain property lying within a quarter of a mile from the
44 limits of the park to have been specially benefited by reason of the location of the park. They decided that, saving some exceptional cases, which the commission was not then ready to consider, there had been no special benefit accruing by reason of the location and improvement of the park to any land within the District of Columbia situated more than a quarter of a mile in any direction beyond the nearest park limits; but that the testimony thus far taken had established the fact, in their opinion, that certain properties within a quarter of a mile from the park and abutting upon it had been specially benefited. The only tract, however, that was specifically designated by the commissioners as so benefited, was tract No. 16, hereinbefore mentioned, the property of the appellees, which was held by them to have "been benefited by the location of the park, not only because of its proximity thereto, but because of its overlook of the park." No special sum of money was named as the amount of the supposed benefit, and there was no formal assessment of value, at least at that time. The designation was made in order to give the appellees a standing in court in the suit instituted by them, it being the avowed desire of the commissioners to have their powers and duties in the premises authoritatively defined for them by the court, as well as the rights of the complainants in the suit and other adjoining owners fully determined.

The appellees thereupon filed a supplemental bill, in which these

further proceedings by the park commissioners were set forth, and the application for an injunction against the commissioners was renewed. The bill and supplemental bill were then in part answered and in part demurred to by the commissioners. The answer, with some unimportant modifications, substantially admitted the allegations of the bill and supplemental bill; the demurrer was to the construction of the statute contended for by the complainants and to the relief sought by them. The cause was set down for final hearing on the bill, supplemental bill, answer, and demurrer. And the court, by Mr. Justice Cox, after having granted a temporary injunction *pendente lite*, finally awarded a permanent injunction perpetually enjoining and restraining the park commissioners from assessing the land of the complainants for the purposes specified by them or for any purpose whatsoever, and rendered a decree to that effect.

From this decree the commissioners have prosecuted the present appeal to this court.

1. The question of the jurisdiction of a court of equity to entertain jurisdiction of a suit of this kind, in view of the provisions of section 3224 of the Revised Statutes of the United States, lies at the threshold of this case, and cannot be ignored. It has not, in fact, been ignored in argument by counsel on either side, although both sides fully concur in the desire that the jurisdiction should be sustained. The appellees, having appealed to the jurisdiction as complainants, very naturally are willing to abide by it; and the appellants, who have desired to be guided by the advice of the court in the premises, and who might possibly, in view of their peculiar functions, be entitled to apply to a court of equity for guidance in the performance of their rather difficult duty, are equally solicitous for some authoritative exposition of the doubtful provisions of the law with regard to that duty. But this concurrence of desire cannot give jurisdiction to the court of equity, unless it can be shown otherwise to exist. We think, however, that this is a case proper for the cognizance of a court of equity.

Section 3224 of the Revised Statutes provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." This section was taken from the tenth section of the act of Congress of March 2, 1867 (14 Stat. 475), which was an amendment of the internal-revenue act of July 13, 1866 (14 Stat. 98), itself an amendment of the acts of June 30, 1864 (13 Stat. 223), and March 3, 1865 (13 Stat. 469); and it is found in the revision among the provisions for the collection of the internal revenue of the United States, where special provision is made for the recovery of taxes wrongfully levied. This would seem to indicate that it was not intended to apply to cases of special assessment, like that now before us, where it is not a question of the revenue of the United States, but to the matter of the ordinary taxes raised and intended for the support of the Government. A special assessment, it is true, is a tax, in the general sense of the term; but it is not such a tax as was contemplated by the statute that has been cited.

The statute seems to be no more than what was already the doctrine of equity, ever since the decision in the case of Mooers *v.* Smedley, 6 Johns. Ch. 28, by Chancellor Kent. A court of equity will not interfere with the collection of taxes simply on the ground that the taxes are illegal. To warrant the intervention of equity, as was said by the Supreme Court of the United States, in the case of Dows *v.* Chicago, 11 Wall. 109, by Mr. Justice Field, "there must exist in addition special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant." But it is well settled that, where there are such special circumstances, equity will intervene, and the statute cited is no bar to the intervention.

In the case of the Union Pacific Railway Company *v.* Cheyenne, 113 U. S. 516, 525, the Supreme Court of the United States, by Mr. Justice Bradley, said:

"It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed have frequently been sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax: for it must be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage, or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected by distress and sale of the tax-payer's lands, the loss of his freehold by means of a tax sale would be a mischief hard to be remedied. Even the
45 cloud cast upon his title by a tax under which a sale could be made would be a grievance which would entitle him to go into a court of equity for relief."

In the case of Lyon *v.* Alley, 130 U. S. 177, 187, which went up from this District, the same high tribunal, speaking by Mr. Justice Lamar, said:

"It is a well-settled doctrine of this court that equity will not interpose to arrest the proceedings for the collection of a tax upon the sole ground of its illegality. It is equally well settled by the decisions of this court and the State courts that, after the land has been sold and a conveyance of some sort made to the purchaser, courts of equity have inherent jurisdiction to give relief to the owner against vexatious litigation and threatened injury to the market value of the land, by removing the cloud which such illegal sale, and the illegal claim arising from it, may cast upon the title. And in such case of damage, either existing or apprehended, equity will interpose for relief, even during the progress of the proceedings before the sale."

To the same effect are the more recent cases of Gage *v.* Kaufman, 133 U. S. 471, and Rich *v.* Braxton, 158 U. S. 375, 405.

The removal of a cloud from the title to land is, therefore, a well-recognized ground of equity jurisdiction, when such cloud is the

result of illegal taxation. The prevention of such a cloud is equally recognized. Prevention and removal are equally within the domain of the remedial processes of equity.

Very applicable to the present, as well as to another aspect of the question, is what the Supreme Court of the United States, by Mr. Justice Harlan, said in the case of Rich *v.* Braxton, *supra:*

"It must be remembered that 'it is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity.' Boyce *v.* Grundy, 3 Pet. 210, 215; Drexel *v.* Berney, 122 U. S. 241; Allen *v.* Hanks, 136 U. S. 300, 311. And the applicability of the rule depends upon the circumstances of each case. Watson *v.* Sutherland, 5 Wall. 74, 79. In the case now before us it cannot be said that the invalidity of the deeds which the plaintiffs seek to have cancelled appears on their face. It is not clear that their invalidity can be placed beyond question or doubt without evidence *dehors* those deeds.

"Besides, by the laws of West Virginia, the tax deeds under which the defendants claim are *prima facie* evidence against the owner or owners, legal or equitable, of the real estate at the time it was sold, his or their heirs or assigns, and all other persons who might have redeemed the same within the time prescribed by law, and conclusive evidence against all other persons that the material facts recited in them are true. Code of W. Va. 1868, ch. 31, sec. 27, &c., &c. Mr. Pomeroy, in his treatise on Equity Jurisprudence, while recognizing it to be the general rule, established by the weight of authority, that equity will not interfere to remove a cloud from title 'where the instrument or proceeding constituting the alleged cloud is absolutely void on its face, so that no extrinsic evidence is necessary to show its invalidity,' or 'where the instrument or proceeding is not thus void on its face, but the party claiming, in order to enforce it, must necessarily offer evidence which will inevitably show its invalidity and destroy its efficacy'—which doctrine, he says often operates to produce a denial of justice—correctly says that equity will interfere, where deeds, certificates, and other instruments given on sales for taxes are made by statute *prima facie* evidence of the regularity of proceedings connected with the assessments and sales. 3 Pomeroy's Eq. Jur., sec. 1399, and note 1, p. 437, and authorities there cited. And this view is sustained by numerous authorities. (Huntington *v.* Central Pacific Railroad, 2 Sawyer, 503, 514; Allen *v.* City of Buffalo, 39 N. Y. 386, 390; Palmer *v.* Rich, 12 Mich. 414, 419; Marquette, H. & O. R. R. *v.* Marquette, 35 Mich. 504; Milwaukee Iron Co. *v.* Town of Hubbard, 29 Wis. 51, 58; Weller *v.* St. Paul, 5 Minn., 95; Pixley *v.* Huggins, 15 Cal. 127; Tilton *v.* O. C. M. R. Co., 3 Sawyer, 22. See also 2 Blackwell on Tax Titles, sec. 1066, and authorities cited.) In the present case there are no defects of a controlling character that distinctly appear on the face of the tax deeds under which the defendants claim title. And as those deeds are made by statute *prima facie* evidence of title in the grantees named in them, and as, therefore, the plaintiffs, if sued in ejectment by the defendants, would be compelled, in order to defeat a recovery against them, to resort to

extrinsic evidence in support of their title, the deeds in question constitute a cloud upon that title, to remove which the plaintiffs may rightfully invoke the aid of a court of equity."

In the case now before us, the statute, under which the park commissioners are acting, expressly makes their assessment a lien upon the land assessed, and precludes inquiry into the regularity or validity of the antecedent proceedings, precisely as in the case of Rich *v.* Braxton, and their action, therefore, necessarily operates to cast a cloud upon the property of the complainants, in respect of which they can have adequate relief only in equity. It is upon the ground that, by the assessment made and threatened to be enforced by the commissioners, a cloud would be cast upon their title to their real estate, and they would be subjected to vexatious litigation and irreparable injury, they expressly seek in their amended and supplemental bill the interposition of a court of equity to relieve them from what is alleged to be the imposition of illegal taxation. And we think, upon the authorities cited, and upon the general principles of equity, that they are entitled to it.

It may be that they should have waited until the commissioners had definitely fixed the amount of the assessment upon their property, and had thereby completed the assessment. But this probably is a matter which the commissioners could have waived, as they have actually waived in their brief and in open court; and it is not apparent, under the peculiar circumstances of this case, that any good purpose would have been subserved by further delay. The commissioners had definitely announced their determination
46 to assess the property in question; in order to fix the amount of the assessment, they required testimony to be taken, which might have involved much delay and expense; and the testimony, when taken, would not have enlightened in any manner the question now at issue, which merely concerns the validity of the statute under which they are proceeding. The determination of the specific amount of the assessment would not have altered the record, or changed in any manner the rights of the parties, so far as they are to be determined by this suit. The question now before us is not the amount of the assessment, but the right of the commissioners to make any assessment.

It may be that this question of jurisdiction should be considered in another aspect also. The power conferred by the statute upon the supreme court of the District of Columbia "to hear and determine all matters connected with said assessment," might perhaps be regarded as a special jurisdiction to be exercised only under the conditions and in the mode prescribed by the statute, and without appeal to this court, since no appeal is expressly provided by the statute itself. But courts of general jurisdiction, and especially courts of equity, are not ousted of their jurisdiction, or of any part of it, except by positive legislation absolutely inconsistent with its continued exercise. Sedgwick on Statutory and Constitutional Law, ch. 4 and 8, and cases cited; Rhode Island *v.* Massachusetts, 12 Pet., 657. The prevention and removal of clouds upon title are subjects of the general equity jurisdiction; and the statute establish-

ing the Rock Creek park does not purport in the remotest degree to interfere with that or any other branch of equity. When the supreme court of the District of Columbia, whether as a court or as an appellate board of assessment, was given the authority conferred here "to hear and determine all matters connected with said assessment," it certainly was not contemplated that one of those matters would be the power of Congress to pass that act itself. And while a court of limited jurisdiction, a board of commissioners, an executive officer, or a private citizen, might decline to exercises powers conferred by a statute which is believed to be void, and would necessarily have to pass upon the question of the validity of the authority sought to be conferred in order to reach the conclusion, yet undoubtedly the attempt to confer such authority cannot in general deprive the courts of general jurisdiction of their right in cases within their cognizance to inquire into the validity of the attempt. The right of the citizen to have recourse to the courts of his country ought not to be construed to be taken away by indirection, where the protection of those courts is the most needed.

We have virtually so held in the cases of the District of Columbia *v.* Prospect Hill Cemetery and others (23 Wash. Law Rep., 162), where one of the consolidated suits was a bill in equity to restrain the enforcement of an unconstitutional or invalid statute, and where we affirmed the decision of the court below awarding an injunction in the case. In the same case, we sustained without question the appeliate jurisdiction of this court, which would have been ousted as well as the jurisdiction of equity, if the special jurisdiction there conferred on the supreme court of the District of Columbia were of the character to exclude the exercise of the general jurisdiction; for that also, like the present, was a case of special statutory authority. The case of Shoemaker *v.* United States, 147 U. S., 282, necessarily affirms the same doctrine; for that was a case growing out of this very same statute; and the Supreme Court of the United States there exercised without question the right of appeal from a judgment of the supreme court of the District of Columbia rendered in proceedings instituted under the same special jurisdiction. We do not mean to hold that a special jurisdiction is not to be exercised specially in accordance with the statute; but that the special jurisdiction here conferred on the supreme court of the District of Columbia does not preclude recourse to equity in proper cases of equity cognizance and does not take away the appellate jurisdiction of this court. (*Ex parte* Zellner, 9 Wall., 244.)

If we had any doubt about the jurisdiction of equity in this case, with the consequent right of appeal to this court, we would be disposed to resolve the doubt in favor of the jurisdiction, in view of the fact that, under the decisions in the cases of Shoemaker *v.* United States and The District of Columbia *v.* Prospect Hill Cemetery, the same precise question that is now raised could be raised by almost identical pleadings under an application of the park commissioners for a confirmation of their assessment. And we think that it is of no great consequence in which way the question is presented, and

that the case is one in which we should look rather to the substance than the form.

We are of opinion that this case is one proper for the cognizance of a court of equity.

2. With reference to the merits of the case, counsel for the appellants in their brief raise two questions, broad enough in their scope, and of very great importance: 1. Whether Congress has power to impose taxes upon land in the District of Columbia by way of assessment for special benefits accruing to such land by reason of the expenditure of public funds for works of public utility; and, 2. Whether, if such power exists, the act of September 27, 1890, providing for the acquisition of land for the Rock Creek park and the levy of assessments upon other lands, specially benefited by its establishment, is a valid exercise of the power. And the argument on behalf of the appellants is directed to show that both questions should be answered in the affirmative.

The extent of the jurisdiction of the Congress of the United States over the District of Columbia must be regarded as quite well settled. The District of Columbia was established for the purposes of the Federal Union, and not for any purposes of its own: and Congress acts therein as the legislature of the Union, but with exclusive jurisdiction extending to all legitimate subjects of legislation. Cohens *v.* Virginia, 9 Wheat. 264; Loughborough *v.* Blake, 5 Wheat. 317; Willard *v.* Presbrey, 114 Wall. 676; Mattingly *v.* District of Columbia, 97 U. S. 690. But that this exclusive jurisdiction is limited and restricted by the Federal Constitution and the
47 amendments thereof, and by the fundamental principles of right and justice recognized by that Constitution, is equally beyond question. Story on the Constitution, sec. 1234; Callan *v.* Wilson, 127 U. S. 540. There is no place anywhere in our system of government, State or Federal, for the theory of legislative omnipotence claimed to appertain to the English Parliament. But except in so far as it is thus restricted by the fundamental law, the legislative authority of Congress over the District of Columbia is supreme and unlimited.

Among the ordinary and essential attributes of sovereignty and subjects of legislation is the power of taxation, which, as Mr. Cooley says in his treatise on Constitutional Law, ch. 4, p. 55, is "unlimited in its range as to the kind of taxes that shall be laid, or the subjects upon which it shall be imposed." And yet this great and vast power of taxation is rigidly limited in the one respect that it must be uniform and equal in its operation, must be levied for public not for private purposes, and must be laid according to some definite and positive rule of apportionment. Taxes may be laid upon lands, upon personal property, upon occupations, upon special classes of property, or upon special occupations, or upon persons; but within the scope of the selection the tax must be uniform. One man cannot be taxed more in proportion than another. These are well established principles of the law of taxation that require no citation of authorities to support them.

It may be that this principle of uniformity is not secured for the

District of Columbia, with regard to the power of exclusive legislation over it that is vested in Congress by the requirement of the eighth section of the first article of the Constitution, that "all duties, imposts, and excises shall be uniform throughout the United States;" for that may well be construed to refer to taxes levied by Congress over the whole territory of the Union. But it is abundantly secured by the provision in the fifth amendment to the Constitution, that "no person shall be deprived of life, liberty or property without due process of law: nor shall private property be taken for public use without just compensation." For private property would be taken for public use without any compensation, and due process of law would absolutely be wanting in any system of taxation that was not uniform in its operations—not necessarily uniform in its results or operating to do exact justice, but free from undue discrimination as to persons.

Whether taxation by way of special assessment is free from the objection of want of uniformity is open to grave doubt. The practice of levying special assessmer seems to be now very generally established throughout our cou y by legislative and municipal action, and to have received the s tion of courts and of text-writers, yet evidently not without some isgivings as to the correctness in principle of the theory upon which the practice is based. See Cooley on Taxation, pp. 416, 417. With all due respect to the public sentiment in favor of the theory of special assessments and to the great preponderance of judicial decision by which it has been sustained, we are disposed to think that a system, to which a large part of the municipal corruption that exists in our country can be traced, and which leads to a result so absurd as that evidenced in the act of Congress now under consideration, must be radically vicious and unjust. We think that it is vicious, because it is arbitrary; all things arbitrary in the administration of government are vicious. We think that it is unjust, because it compels the individual citizen in many cases, probably in most cases, to pay more than his just share of the common burden for the public good.

Special assessments are levied arbitrarily and without any rule having a fixed foundation in justice. They are usually authorized in connection with some unusual scheme of public improvement like this Rock Creek Park enterprise in the present instance. Generally they do not form part of any permanent or well-established scheme of taxation; and they vary in their scope and terms with every varying enterprise to the aid of which they are applied. Sometimes one-fourth, sometimes one-third, sometimes one-half, and sometimes even two-thirds or three-fourths of the cost of a public improvement is levied under the theory of special assessment upon adjoining owners supposed to be benefited specially by such public improvement. And if any part of the cost may so be assessed, the whole may be. Indeed, in the very case before us, it is sought to cast the whole and entire cost of the enterprise upon the adjoining owners; and the theory is carried to its extreme extent, a conclusion that would make it ludicrous if it were not so grossly oppressive.

But if these works, for which special assessments are sought to

be levied, are public works, the public alone should pay for them. If they are not public works, the public authorities have no right to undertake them. We believe that there is no middle ground of partnership in such works between the public and the individual citizen; and that compulsory payment therefor by the individual citizen is unjust, when perhaps he has not requested the improvement and may even have antagonized it. The system grew out of early legislation, in which, when the opening of streets or other public enterprises was somewhat in advance of the requirements or of the resources of a municipality or community, and private individuals, specially interested, and to whom the enterprise would be an immediate benefit requested the work, compliance with their request was authorized upon their assumption of a share of the expense. But in those cases the special assessment was the result of a contract, and was therefore never compulsory.

We are aware that there is very great plausibility in the theory of special assessment. At first sight it seems to be exceedingly just and equitable that one whose property has been enhanced in value by its proximity to a public improvement, should contribute to the cost of that improvement in proportion to the amount of benefit received by his property. But the proposition it more plausible than sound. Apart from the incongruity of benefiting one without his consent and possibly against his will and then levying a contribution upon him for that in which he has had no voice, and assuming that the so-called benefits are not illusory and
48 intangible, the fair and just contribution of the citizen is secured without arbitrary exaction by the increased assessment of his property for general taxation and the increased returns therefrom to the general fund. Moreover, it is not quite apparent, upon general principles of justice, why, when a public improvement is located in a certain neighborhood, without inducement by adjoining owners for its location there, peremptory demand should then be made upon those owners to hand over to the public a sum of money equivalent to the supposed enhancement of their property in value by reason of the location of the public improvement. A private individual, who improves a neighborhood by building therein, could not with much grace support a demand upon his neighbors for contribution to the cost of his building, on the ground that their property has been enhanced in value by his action; and there does not seem to be any better reason for the public to do so. Nor, when contrary conditions arise, is there any rule of law or equity that requires the public to compensate an adjoining owner, when his property has been depreciated in value by the location in his neighborhood of a jail, or a pest-house, or any other similar undesirable structure. The sovereign, or a municipality as the representative of the sovereign, should not shield itself in the one case behind the theory that the state can do no wrong, and yet claim in the other case that there is natural equity in its favor.

But while we have deemed it not improper thus strongly to express our views upon the substantial merits of the theory of special

assessment, it must be admitted, as we have already stated, that the great preponderance of judicial authority is in favor of sustaining the validity of legislative action which imposes such assessment. In our own jurisdiction the Supreme Court of the United States, in the case of Mattingly *v.* District of Columbia, 97 U. S. 687, has sustained the theory, upon the ground merely of the great current of judicial decision to that effect; and to that authority, of course, we must bow. It is not necessary for us in the present case to base our decision upon the hardship of special assessments, or upon the supposed unsoundness of the theory upon which they are sustained. The theory has its limitations and restrictions, as has the power of general taxation; and we think that it will be found, upon a closer analysis of the authorities, at all events of the best authorities upon the subject, that the theory has been applied only when some easement or appurtenance has been added to the lands of the person assessed, or when some advantage has been given him which he did not possess before, such generally as the improvement of a street for access to his property or the construction of a sewer for the drainage of his land, or some similar work which he could and should have done for himself, if it were not that such work by a private individual for obvious reasons would be impracticable.

The Rock Creek park, authorized by the statute now before us, is nothing of that kind. It is something, as expressly declared in the act, "perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States." It is a public enterprise, therefore, for a purely public purpose, and for the general benefit of all the people of the Union; and assuming that, inasmuch as it is located in the District of Columbia, and is of special benefit to the District of Columbia, Congress can properly impose a special assessment on the District of Columbia to defray a part of its expense, it does not follow that it can go farther and impose the whole cost or any part of it upon any individual or number of individuals in the neighborhood whom it pleases to select for the purpose of assessment. Recognized territorial subdivisions, such as counties, townships, municipalities, may undoubtedly be specially assessed under the authority of the State for a share of the cost of works of public improvement located within their borders; for the reason that such territorial organizations are only creatures of the State for governmental purposes and are wholly within the control of the State; and what we have heretofore said in reference to special assessments in general has no application to them. This much we understand to have been decided in the case of Mobile *v.* Kimball, 102 U. S. 691; and this also is the extent to which we understand the intimation to go of the Supreme Court of the United States in the case already cited of Shoemaker *v.* United States, 147 U. S. 282. Nor do we understand that any different principle is laid down by any of the decisions cited in the latter case. But individual citizens cannot thus be selected for assessment, nor can their property be constituted a special taxing district for the occasion. Mr. Justice Cox, in his excellent opinion in this case, well said:

"When it comes to assessing individuals for public improvements, the question seems to be different. Suppose, for example, a court-house or a public monument or post-office should be erected in a town and the private property of individuals adjacent to it should be specially taxed for the supposed greater convenience which they enjoy of access to the court-house or post-office, or the privilege of gazing upon the public monument, it would at once be seen that great injustice had been done. It does seem to me that this would be a system of taxation which would not conform to the spirit of our Constitution. It might as well have been held proper to assess the buildings opposite this court-house for the pleasure of gazing upon the Lincoln monument, if that monument had been erected by public authority."

In this we fully concur. We think that it fairly and justly expresses the law on the subject. The sixth section of the act of Congress of February 27, 1890, establishing the Rock Creek park, so far as it can possibly be construed to have a meaning, has for its sole object and purpose the imposition of a special assessment on the lands adjoining the park for the purpose of paying the cost and expense of the park. In fact, it seems to have been contemplated that such special assessment might pay the whole cost and expense of the park, including even the compensation payable to the commissioners, and leave a surplus to be expended in the improvement of the grounds. More than that—the section is capable of a construction that would make the enterprise a speculation of most
49 extraordinary and remarkable profit to the United States; for besides the fact that under it an assessment would be possible that would secure sufficient money to replace in the Treasury of the United States the whole amount of $1,200,000 that was expended in the acquisition of the land for the park, there is the provision that the District of Columbia as a municipality must in any event refund one-half the amount, or $600,000, to the Treasury. So that it would be quite feasible under the act for the United States to receive $1,800,000 by a levy of forced contribution to reimburse them for their expenditure of $1,200,000. Such a result would be shocking to our sense of natural justice, to all our ideas of constitutional guaranty, and to our whole theory of governmental propriety. An enactment that necessarily leads to this conclusion we are compelled to regard as a violation of the Constitution of the United States.

3. But proceeding one step farther, we find that not only is this section violative of the fundamental law of the land, it is likewise so hopelessly inconsistent and meaningless that it is impossible to determine its sense with any certainty; and consequently impossible to execute it with any propriety, even if it were not affected with the fatal taint of unconstitutionality. It is very evident that this section was passed without much, if any, consideration by Congress. It does not reflect the legislative mind or express the legislative intention, and it is so hopelessly involved in palpable inconsistency and a maze of meaningless verbiage that it is impossible to apply to it any of the canons of construction that a

court is authorized to apply in such cases. Counsel for the appellants virtually ask us so to reconstruct the phraseology of the enactment as to give it sense and meaning. Courts have gone very far, where the legislative intention is clear, to disregard words and terms that were evidently not contemplated to be in the statute, in some cases even converting negative phrases into positive phrases, and the reverse (Chapman *v.* State, 16 Tex. App., 78); but in all such cases the meaning intended by the legislature must be clear from the context. Not only is the meaning in the present case not clear: it is difficult, if not impossible to deduce any meaning from the language employed. We can add nothing to the excellent analysis of the section made by Mr. Justice Cox, in his opinion, which appears in the record in the case; and we can do no better than concur in that opinion and embody it in our own.

One feature of that opinion we may emphasize. One clause of section 6 seems to authorize assessment by the commissioners for benefits accruing from the *location* and *improvement* of the park; another clause for benefits accruing from the *location* alone. It is conceded that there has been absolutely no *improvement* whatever of the park thus far, and that the only change is in the transfer of title to the United States. The only power to assess is, therefore, in the clause which authorizes assessment for location, if it does, in fact, so authorize; and here again it is conceded that there has been no change whatever from previous conditions. Adjacent owners, then, are to be assessed because the United States have taken title to a tract of land adjoining them, in order to lessen the burden of expense to the United States. To state the proposition is to demonstrate its gross absurdity.

We think that the decree of the supreme court of the District of Columbia in the premises was right; and that decree must be *affirmed with costs.*

Dissenting Opinion by Mr. Chief Justice Alvey.

I regret very much that there should be any dissent from the opinion of the majority of the court in this case. But I feel compelled to dissent from the opinion and conclusion of my brothers in respect to the two main propositions maintained by them in their opinion. First, that there is jurisdiction in a court of equity to grant the relief prayed for in the original and supplemental bill, upon which the decree below was founded; and, second, that the express power given by the sixth section of the act of Congress of September 27, 1890, authorizing the assessment of real estate for special benefits accruing thereto, by reason of the establishment of a public park in the District of Columbia, is in violation of the Constitution of the United States, and therefore utterly void.

I shall state the reasons of my dissent on these two propositions briefly, and shall, therefore, not attempt to recite the allegations of the bill. Suffice it to say, that the application for and the granting of the injunction were both before any assessment had been actually made upon the property of the complainants; and that, while

there are many grounds alleged in the bill for the injunction, the principal ground for the relief prayed, is that of the supposed unconstitutionality of the sixth section of the act of Congress authorizing the establishment of the park.

The defendants, United States officers and agents, constituted by the act a commission to lay off and acquire the land for the park, either by purchase or condemnation, with authority to make the special assessments upon the lands specially benefited by the improvement, answered certain parts of the original and supplemental bill of the complainants, and demurred to certain other parts; and for cause of demurrer, alleged that the complainants have not in and by their original and supplemental bill, made or stated such a case as entitles them to any relief in a court of equity.

On this state of the record the majority of this court hold, as I understand the opinion, affirming the decree of the court below, that a court of equity has jurisdiction to take cognizance of the case, and that the sixth section of the act of Congress involved is entirely unconstitutional and therefore void, and that, consequently, the complainants are entitled to a perpetual injunction against the exercise of any of the powers thereby attempted to be conferred by Congress.

1. With respect to the first question presented, that of the jurisdiction of a court of equity to take cognizance of the case,
50 I entirely dissent from the opinion of the majority of the court. Congress having by the act in question provided the mode of procedure, and conferred, by expressed terms, jurisdiction upon the supreme court of the District, "to hear and determine *all matters connected with said assessment;* and to revise, correct, amend, and confirm said assessment, in whole or in part, or order a new assessment, in whole or in part, with or without further notice, or on such notice as it shall prescribe;" and declared that "the orders of the court shall be conclusive evidence of the regularity of all previous proceedings necessary to the validity thereof, *and of all matters recited in said orders,*" in my opinion, a court of equity has no power to review and control the action of the supreme court of the District, in the exercise of its powers and jurisdiction under the statute. That jurisdiction is exclusive, subject only to the right of appeal to an appellate jurisdiction upon questions of constitutional rights actually involved in the proceeding. To give to a court of equity jurisdiction, in the absence of express statute, there must be presented a case where the principles of law, by which the ordinary courts are guided, give right, but the powers of those courts are not sufficient to afford a complete remedy, or their modes of proceeding are inadequate to attain full and complete justice; or where the courts of ordinary jurisdiction are made instruments of injustice; or where the principles of law by which the ordinary courts are governed give no rights, but upon the principles of universal justice, the interference of a court of equity is necessary to prevent a wrong, the positive law being silent. In neither of these categories is the present case embraced. There is ample remedy provided by the statute; and where the legislature has given jurisdiction by

statute to a designated court, for taking and conducting proceedings under the statute, and especially where it has made the decision of that court final, no equity can be founded on the allegation that such court is not properly competent to decide questions that may arise within its jurisdiction. In such case, a court of equity does not become a court of review, nor can it be made subsidiary to the tribunal created or clothed with power by the legislature for settling the rights of parties, upon the mere ground that that tribunal has miscarried, or may miscarry, in the settlement of those rights. Canal Co. *v.* Twibell, 7 Beav. 19, 28; Bateman *v.* Boynton, L. R. 1 Ch. App. 360, 368. The supreme court of the District was given power and jurisdiction, by the terms of the statute, after due notice given, "*to hear and determine all matters* connected with said assessment;" and the mode of proceeding prescribed by the statute, is due process of law. The supreme court of the District was and is competent to decide every question, connected with the assessment, that could arise or be presented in the course of the proceeding, including the question of the constitutionality of the act itself. In the event of holding the act, or any part of it, unconstitutional, or the refusal so to hold it, upon presentation of such question to the court by exception to the report of the commissioners, an appeal would lie to this court, as a writ of error did lie to the Supreme Court of the United States before this court was established. Shoemaker *v.* United States, 147 U. S. 282. And even an appellate court, much less a court of equity on a collateral application, will not interfere with the report of commissioners, to correct errors of procedure, or errors of judgment in arriving at the amount of assessment. Mills on Eminent Domain, 246; Shoemaker *v.* United States, *supra*. This is well illustrated by the much-cited case of Mooers *v.* Smedley, 6 John. Ch. 28. In that case the supervisors of a town, under an act of the legislature, and pursuant to the vote of the town, allowed bounties for the destruction of wolves, the amount of which was inserted in the annual tax-list, to be levied and collected of the owners of land. On an application for an injunction, to restrain the collection of the sums so allowed for bounties, the injunction was denied. And in denying the injunction, Chancellor Kent remarked: "I cannot find, by any statute, or precedent, or practice, that it belongs to the jurisdiction of chancery, as a court of equity, to review or control the determination of the supervisors, in their examination and allowance of accounts as chargeable against their county, or any of its towns, and in causing the money so allowed to be raised and levied. There was no allegation of fraud or corruption in the case. The most that could be said, was, that they made an erroneous determination." That case has been cited and approved by the Supreme Court of the United States in the case of Hannewinkle *v.* Georgetown, 15 Wall. 548. In the present case, as in the case of Moores *v.* Smedley, there is no allegation or pretence that there is any fraud or corruption in the case. Here, there was a competent court provided to direct and supervise the proceedings of the commissioners.

The effort to introduce an element that would give jurisdiction to

the court, by alleging that the threat of assessment for special benefits would produce a cloud upon the title of the property of the complainants, because, if consummated, such assessment would create a lien upon the property, will not justify a court of equity in interposing, and thereby become a court of review upon the proceedings authorized by the statute. Such allegation is easily made, and it could as well be made in every case of proceeding at law, where the judgment would create a lien upon the property of the debtor, as in the present case. There must be something more than the mere fact, that the property may be subject to a lien, as the final result of the pending proceeding, in order to confer jurisdiction upon a court of equity to arrest such proceeding by injunction. In this case, according to the theory and assumption of the bill, the attempted assessment for special benefits, is unconstitutional and void, because the act of Congress was passed without constitutional warrant, and is therefore void upon its face. If this be true, according to well-established principle, there is no such cloud upon the title as will justify the interference of a court of equity; the statute showing upon its face that it is without force or authority to charge the estate. Dows *v.* The City of Chicago, 11 Wall. 109; Hannewinkle *v.* Georgetown, 15 Wall. 548.

51 Courts of equity are not constituted for the purpose of arresting proceedings, and assuming to themselves the right of disposing of cases, that are properly depending in the ordinary courts of law. It is only upon special and particular circumstances, appealing to the conscience of the chancellor, that a court of equity is justified in interposing for the relief of the party complaining. A court of equity is not constituted a court of review on constitutional questions that may be decided by tribunals inferior to the Supreme Court of the United States; nor is such court possessed of exclusive, nor even of concurrent, jurisdiction in respect to such questions; and hence there is no authority or reasonable ground for coming to a court of equity in a case like the present. In every case, circumstances should be stated that show that in the particular case there is an equity that cannot be availed of by the party complaining, in the proceedings sought to be restrained. There can be no reason or propriety in appealing to a court of equity to restrain proceedings that are being regularly conducted in other courts, competent to construe the statutes under which they act, and to decide every question that may arise in the course of the proceeding. To allow litigations to be thus diverted, tends to the multiplication of litigation, and the production of unnecessary delay and expense, to say nothing of the unnecessary vexation to parties. I am of opinion, therefore, that there is no jurisdiction in equity to maintain the bill in this case.

2. But, assuming the existence of jurisdiction, and that the question was properly before this court for decision, in such case, I should have no difficulty whatever in holding that the sixth section of the act of Congress of September 27, 1890, 26 Stat. 492, ch. 1001, is constitutional and valid. Looking to the large and unrestricted legislative power of Congress over this District, under the Constitution,

if the power to authorize assessments for special benefits, by reason of improvements, exists anywhere, it would seem certainly to exist here. The sixth section, declared unconstitutional by the opinion of the majority of the court, forms a vital part of the act, and in fact constitutes the basis of the plan and scheme of the park. Without the provision contained in the sixth section of the act, to supply the means of indemnity and reimbursement, it can hardly be supposed that Congress would have passed the act, and charged the entire cost and expense of the improvement to the Treasury of the United States, and to the District of Columbia. It was in view of what was deemed a well-settled principle, that of legislative power to authorize assessments for special benefits, that Congress provided by the sixth section of the act, that the commissioners should assess, by way of indemnity and reimbursement, "such proportion of the cost and expenses upon the lands in the District of Columbia specially benefited by reason of the location and improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate." The constitutional power to impose such assessments for special benefits, was supposed to be too well established to be made a matter of serious question. It had been so expressly decided by the Supreme Court of the United States, in cases arising in this District. Hannewinkle *v.* Georgetown, 15 Wall. 547; Mattingly *v.* Dist. of Col., 97 U. S. 687. And in a case arising under the very statute now under consideration, the question of the constitutionality of the sixth section of the act was pointedly made and expressly decided in affirmance of the validity of the section, and of the entire act. Indeed, to strike from the statute the sixth section, as being unconstitutional, or otherwise void, is simply to disembowel the act, and destroy the means designed for the ultimate payment of the cost and expenses of the improvement, and impose the whole burthen upon the United States Treasury and the District of Columbia. This is a very grave consequence of declaring the sixth section of the act unconstitutional, or otherwise inoperative, and it should only be so declared upon the plainest and most unmistakable ground. In my judgment, with all due deference to the opinion of my brothers, the sixth section of the act is not only constitutional upon general principles of legislative power, but it has been so expressly declared by the Supreme Court of the United States, in the case just referred to, of Shoemaker *v.* United States, 147 U. S. 302.

In that case, the court, in considering the several questions that involved the constitutionality of the entire act, said: "A further objection is made to the validity of the act, by reason of the sixth section, which provides for the assessment of benefits resulting from 'the location and improvement of said park,' upon lands so especially benefited.

"The cases heretofore cited to show that the erection of parks in cities is a public use, in a constitutional sense, were, most of them, cases in which it was likewise held that it is competent for the legislature, in providing for the cost of such parks, to assess a proportionate part of the cost upon property specially benefited; and we need not repeat the citations.

"No special request, on the subject of the legal effect of the provision in respect to special benefits, seems to have been made to the court below, and there is no specific assignment of error as to it. Nor does it appear that any person having property actually assessed for special benefits is a party as plaintiff in error. We are therefore relieved from any extended consideration of this feature of the act."

And, in the conclusion of the opinion, the court say, "Our conclusion is that we find, in the legislation creating the park and in the proceedings under it, no infringement of the Constitution or of the legal rights of the plaintiffs in error, and the judgment of the court below is accordingly affirmed."

This broad declaration as to the validity of the act would hardly have been made by the court, if one of the principal parts of the statute, and which had been urged as being unconstitutional, and therefore affecting the validity of the entire act, had appeared to the court as being subject to the objection taken to it. I see nothing in the sixth section of the act which requires from the court the declaration that the section is unconstitutional, or otherwise void, or inoperative, either in whole or in part. And being of this opinion, I must dissent from the opinion of the majority of the court; and, according to my opinion, the bill filed in this case should have been dismissed.

52 TUESDAY, *March 17th, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,

vs.

MARY VAN RISWICK, Widow, AVARILLA Lambert and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased.

No. 521.
January Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed, with costs.

Per MR. JUSTICE MORRIS.

March 17, 1896.

Dissenting: Mr. Chief Justice Alvey.

53 TUESDAY, *March 24th, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow, AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased. } No. 521.

On motion of Mr. A. A. Birney, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of three hundred dollars.

54 In the Court of Appeals of the District of Columbia.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow, AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased, Appellees. } No. 521.

Stipulation.

Mary Van Riswick, one of the complainants in the original and supplemental bills filed in this cause and who was tenant in dower only of the parcels of ground in respect of which the relief prayed in said bills is sought, having departed this life on the 24th day of February, 1896, and her interest in this cause having been extinguished by her death, it is thereupon, this 26th day of March, 1896, stipulated and agreed between the solicitors for the appellants and the solicitors for the surviving appellees that the death of the said Mary Van Riswick be suggested to the court, and that the court shall pass an order that the bond required to be given by the appellants on their appeal to the Supreme Court of the United States, heretofore allowed, from the decree passed by this court herein, shall run in the name of the surviving appellees, and that said appeal may be prosecuted as against said surviving appellees.

LAMBERT AND LAMBERT,
Solicitors for Surviving Appellees.
HUGH T. TAGGART,
JOHN E. LASKEY,
Assistant U. S. Attorneys, Solicitors for Appellants.

Filed M'ch 26, 1896.

ROBERT WILLETT, *Clerk.*

55 THURSDAY, *March 26th, A. D.* 1896.

WILLIAM P. CRAIGHILL, CHARLES F. POWELL, HENRY V. Boynton, Samuel P. Langley, and R. Ross Perry, Constituting and Composing the Commission to Select the Land for Rock Creek Park, Appellants,
vs.
MARY VAN RISWICK, Widow, AVARILLA LAMBERT and Martina Carr, Children and Sole Heirs-at-law of John Van Riswick, Deceased, Appellees.
} No. 521.

The death of Mary Van Riswick, one of the complainants to the original and supplemental bills filed in this cause, as tenant in dower of the premises in respect of which relief is prayed for in said bills, having been suggested, it is thereupon ordered, pursuant to stipulation of solicitors for the appellants and solicitors for the surviving appellees, that the bond required by an order of this court to be given on the appeal of said appellants to the Supreme Court of the United States shall run in the name of the surviving appellees, and that said appeal may be prosecuted as against said surviving appellees.

By the court:

R. H. ALVEY, *Ch. Justice.*

56 Know all men by these presents that we, William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley and R. Ross Perry, composing the Rock Creek Park Commission, as principals, and Augustus S. Worthington, as surety, are held and firmly bound unto Avarilla Lambert and Martina Carr in the full and just sum of three hundred dollars ($300), to be paid to the said Avarilla Lambert and Martina Carr, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, constituting and composing the commission to select the land for Rock Creek park, appellants, and Mary Van Riswick, widow (now deceased), Avarilla Lambert and Martina Carr, children and sole heirs-at-law of John Van Riswick, deceased, appellees, a decree was rendered against the said appellants, and the said appellants having been allowed an appeal to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and a citation directed to the said Avarilla Lambert and Martina Carr, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said

William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, as such commission, shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

WM. P. CRAIGHILL.	[SEAL.]
CHARLES F. POWELL.	[SEAL.]
HENRY V. BOYNTON.	[SEAL.]
S. P. LANGLEY.	[SEAL.]
R. ROSS PERRY.	[SEAL.]
AUGUSTUS S. WORTHINGTON.	[SEAL.]

Sealed and delivered in the presence of—

—— ——.

Allowed by—

R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 521. William P. Craighill *et al.*, appellants, *vs.* Avarilla Lambert *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed March 30, 1896. Robert Willett, clerk.

57 UNITED STATES OF AMERICA, *ss:*

To Avarilla Lambert and Martina Carr, children and sole heirs-at-law of John Van Riswick, deceased, survivors, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, constituting and composing the commission to select the land for Rock Creek park, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 30th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged.
MARTINA CARR.

Service acknowledged for Avarilla Lambert.
TALLMADGE A. LAMBERT.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 3, 1896. Robert Willett, clerk.

58 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 57, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of William P. Craighill *et al.*, constituting and composing the commission to select the land for Rock Creek park, appellants, *vs.* Mary Van Riswick, widow, *et al.*, No. 521, January term, 1896, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of April, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,271. District of Columbia Court of Appeals. Term No., 504. William P. Craighill, Charles F. Powell, Henry V. Boynton, Samuel P. Langley, and R. Ross Perry, constituting and composing the commission to select the land for Rock Creek park, appellants, *vs.* Avarilla Lambert and Martina Carr, children and sole heirs-at-law of John Van Riswick, deceased, survivors. Filed April 29, 1896.